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भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 11 जुलाई, 2012

का. आ. 2297.—केंद्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, छत्तीसगढ़ उच्च न्यायालय, बिलासपुर में दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित मामलों से उद्भूत अन्य मामलों या पुनरीक्षणों, अभियोजन अपीलों का संचालन करने के लिए सर्वश्री गौतम भादुड़ी तथा शैलेन्द्र दुबे, वकीलों को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/16/2012-ए वी डी-II]
एम. पी. रामाराव, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 11th July, 2012

S. O. 2297.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints S/Shri Goutam Bhaduri and

Shailendra Dubey, Advocates as Special Public Prosecutor of the Central Bureau of Investigation in the Chhattisgarh High Court at Bilaspur for conducting the prosecution appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI).

[F.No. 225/16/2012-AVD-II]

M.P. RAMARAO, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 2 जुलाई, 2012

का.आ. 2298.—राष्ट्रीय आवास बैंक अधिनियम, 1987 (1987 का 53) की धारा 6 के खंड (च) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार दिनांक 19-3-2012 की अधिसूचना के अनुक्रम में एतद्वारा, श्री सुधीर कुमार, सचिव, बिहार सरकार को श्री शशि शेखर शर्मा, प्रधान सचिव, बिहार सरकार, शहरी विकास एवं आवास विभाग, के स्थान पर तत्काल प्रभाव से तथा अगले आदेशों तक राष्ट्रीय आवास बैंक के निदेशक मण्डल में निदेशक के रूप में नामित करती है।

[फा. सं. 24/17/2010-आईएफ-II]

रमण कुमार गौड़, अवर सचिव

MINISTRY OF FINANCE**(Department of Financial Services)**

New Delhi, the 2nd July, 2012

S.O. 2298.—In continuation of the Notification dated 19-3-2012, in exercise of the powers conferred by clause (f) of Section 6 of the National Housing Bank Act, 1987 (53 of 1987), the Central Government hereby appoints Shri Sudhir Kumar, Secretary to the Government of Bihar as Director on the Board of Directors of National Housing Bank (NHB) in place of Shri Shashi Shekhar Sharma, Principal Secretary to the Government of Bihar, Urban Development and Housing Department, with immediate effect and until further orders.

[F.No. 24/17/2010-IF-II]

RAMAN KUMAR GAUR, Under Secy.

(राजस्व विभाग)

(केन्द्रीय उत्पाद शुल्क एवं सीमा-शुल्क बोर्ड)

नई दिल्ली, 3 जुलाई, 2012

का.आ. 2299.— केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में राजस्व विभाग, केन्द्रीय उत्पाद शुल्क एवं सीमा-शुल्क बोर्ड के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :

1. आयुक्त सेवाकर का कार्यालय, अहमदाबाद
2. सहायक/उप आयुक्त सेवाकर का कार्यालय मंडल-I, अहमदाबाद
3. सहायक/उप आयुक्त, सेवाकर का कार्यालय, मंडल-II अहमदाबाद
4. सहायक/उप आयुक्त, सेवाकर का कार्यालय, मंडल-III, अहमदाबाद

[फा.सं. ई. 11017/1/2012-हिंदी-2]

चंद्र भान नारनौली, निदेशक (राजभाषा)

(Department of Revenue)

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 3rd July, 2012

S. O. 2299.—In pursuance of Sub-Rule (4) of Rule 10 to the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Department of Revenue, Central Board of Excise & Customs, whereof more than 80% of the staff have acquired the working knowledge of Hindi:

1. Office of the Commissioner, Service Tax, Ahmedabad.
2. Office of the Asstt./Dy. Commissioner, Service Tax, Division-I, Ahmedabad.
3. Office of the Asstt./Dy. Commissioner, Service Tax, Division-II, Ahmedabad.
4. Office of the Asstt./Dy. Commissioner, Service Tax, Division-III, Ahmedabad.

[F.No. E.11017/1/2012-Hindi-II]

CHANDRA BHAN NARNAULI, Director (OL)

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 6 जुलाई, 2012

का. आ. 2300.— भारतीय स्टेट बैंक (समनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उप-धारा 2(क) के साथ पठित धारा 25 की उप-धारा (1) के खण्ड (ग ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्वारा, श्री चमन लाल सिंगला (जन्म तिथि : 15-2-1957), प्रबंधक (एम एम जी एस-III) को उनकी नियुक्ति की अधिसूचना की तारीख से तीन वर्षों की अवधि के लिए अथवा स्टेट बैंक आफ पटियाला के कर्मकार कर्मचारी के रूप में उनके पदभार छोड़ देने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, स्टेट बैंक आफ पटियाला के निदेशक मण्डल में कर्मकार निदेशक के रूप में नियुक्त करती है।

[फा. सं. 6/1/2012-बीओ-1]

विजय मल्होत्रा, अवर सचिव

(Department of Financial Services)

New Delhi, the 6th July, 2012

S. O. 2300.—In exercise of the powers conferred by clause (cb) of the sub-section (1) of Section 25 read with sub-section (2A) of Section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Chaman Lal Singla (DoB : 15-2-1957), Manager (MMGS-III) as Officer Employee Director on the Board of Directors of State Bank of Patiala, for a period of three years from the date of notification of his appointment or until he ceases to be an officer of the State Bank of Patiala or until further orders, whichever is earlier.

[F.No. 6/1/2012-BO-I]

VIJAY MALHOTRA, Under Secy.

कार्यालय मुख्य आयकर आयुक्त

जयपुर, 4 जुलाई, 2012

सं. 03/2012-13

का. आ. 2301.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खण्ड (23सी) की उप-धारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा

निर्धारण वर्ष 2012-13 एवं आगे के लिए कथित धारा के उद्देश्य से "ज्योतिबा फुले सोशियल वेलफेयर सोसायटी, जयपुर" को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खण्ड (23 सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करे।

[क्रमांक: मुआआ/अआआ/(मु)/जय/10(23सी)(vi)/12-13/1859]

ब्रजेश गुप्ता, मुख्य आयकर आयुक्त

OFFICE OF THE

CHIEF COMMISSIONER OF INCOME TAX

Jaipur, the 4th July, 2012

No. 03/2012-13

S. O. 2301.—In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 (43 of 1961) read with the rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves "Jyotiba Fule Social Welfare Society, Jaipur" for the purpose of said section from A.Y. 2012-13 & onwards.

2. Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl.CIT(Hqrs.)/10(23C)(vi)/2012-13/1859]

BRIJESH GUPTA, Chief Commissioner of Income-tax

सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय

नई दिल्ली, 2 जुलाई, 2012

का. आ. 2302.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में सूक्ष्म, लघु और मध्यम उद्यम मंत्रालय के नियंत्रणाधीन निम्नलिखित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, जो एतद्वारा अधिसूचित करती है :

1. सूक्ष्म, लघु और मध्यम उद्यम विकास संस्थान, 'सी' ब्लॉक, सी.जी.ओ. कॉम्प्लेक्स, सेमिनरी हिल्स, नागपुर-440006

[सं. ई-12016/01/2005-हिन्दी]

सी. कं. मिश्रा, संयुक्त सचिव

MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES

New Delhi, the 2nd July, 2012

S. O. 2302.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office, under the control of the Ministry of Micro, Small & Medium Enterprises, whose more than 80% staff has acquired working knowledge in Hindi:

1. Micro Small Medium Enterprise - Development

Institute, "C" Block, C.G.O. Complex, Seminary Hills, Nagpur-440006.

[No. E-12016/1/2005-Hindi]

C. K. MISHRA, Jr. Secy.

कारपोरेट कार्य मंत्रालय

नई दिल्ली, 6 जुलाई, 2012

का. आ. 2303.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, कारपोरेट कार्य मंत्रालय के अंतर्गत कम्पनी रजिस्ट्रार-सह-शासकीय समापक कार्यालय, जम्मू एवं कश्मीर जिसके न्यूनतम 80 प्रतिशत कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[सं. ई-11016/1/2010-हिन्दी]

जे. एस. गुप्ता, अवर सचिव

MINISTRY OF CORPORATE AFFAIRS

New Delhi, the 6th July, 2012

S. O. 2303.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the office of the Registrar of Companies-cum-Official Liquidator, Jammu and Kashmir as 80% of its staff have acquired working knowledge of Hindi.

[No. E-11016/1/2010-Hindi]

J.S. GUPTA, Under Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 4 जुलाई, 2012

का. आ. 2304.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, कृषि एवं सहकारिता विभाग, कृषि मंत्रालय के स्वायत्त निकाय राष्ट्रीय सहकारी विकास निगम, नई दिल्ली के अन्तर्गत निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालयों को जिसके 80% कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :-

1. राष्ट्रीय सहकारी विकास निगम,

क्षेत्रीय निदेशालय,

360/2, 3, न्यू गायत्री नगर,

पो. ऑ. शंकर नगर,

रायपुर-492007.

2. राष्ट्रीय सहकारी विकास निगम,

क्षेत्रीय निदेशालय,

एम-23/डीएस, हरमू हाऊसिंग कॉलोनी,

रांची-834012.

[सं. 3-3/2011-हि.नी.]

उमा गोयल, संयुक्त सचिव

MINISTRY OF AGRICULTURE
(Department of Agriculture and Cooperation)

New Delhi, the 4th July, 2012

S. O. 2304.— In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices, which are under the administrative control of the National Cooperative Development Corporation, New Delhi, an autonomous body of the Department of the Agriculture and Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi

1. National Cooperative Development Corporation
Regional Directorate
360/2.3, New Delhi Gayatri Nagar,
P.O. Shanker Nagar,
2. National Cooperative Development Corporation
Regional Directorate,
M-23/DS, Harmu Housing Colony
Ranchi - 834012.

[No.3-3/2011-Hindi Neeti]

UMA GOEL, Jt. Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 26 जून, 2012

का. आ. 2305.— भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या, वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
1.	आई एस/आई एस ओ 22006 : 2009 गुणता प्रबन्ध पद्धतियाँ - फसल उत्पादन में आई एस ओ 9001 : 2008 के अनुप्रयोग की मार्गदर्शिका	-	31 मई, 2012

इन भारतीय मानक (को) की प्रतियाँ भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चैन्नई, मुम्बई, चण्डीगढ़ तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : एफएडी/जी-128]

डॉ. आर. के. बजाज, वैज्ञानिक 'एफ' एवं प्रमुख (खाद्य एवं कृषि)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 26th June, 2012

S. O. 2305.— In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.	No. & Year of the Indian Standards Established	No. & Year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
1.	IS/ISO 22006: 2009 Quality Management Systems - Guidelines for the Application of ISO 9001: 2008 to Crop Production	-	31 May, 2012

Copy of these standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi - 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: FAD/G-128]

DR. R. K. BAJAJ, Scientist 'F' and Head (Food & Agri.)

नई दिल्ली, 28 जून, 2012

का. आ. 2306.—भारतीय मानक ब्यूरो नियम, 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (कों) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 952:2012 फायर ब्रिगेड में प्रयोग होने वाले फाग नोजल-विशिष्ट (दूसरा पुनरीक्षण)	आई एस 952: 1986	30 जून, 2012
2.	आई एस 2097:2012 झाग बनाने के लिए शाखा पाइप और झाग प्रेरक - विशिष्ट (दूसरा पुनरीक्षण)	आई एस 2097:1983	31 मई, 2012
3.	आई एस 2871:2012 अग्नि शमन के लिए सर्वदिश शाखा पाइप - विशिष्ट (दूसरा पुनरीक्षण)	आई एस 2871:1983	31 मई, 2012

इस भारतीय मानक की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह जफर मार्ग, नई दिल्ली-110002. क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चण्डीगढ़, चैन्नई, मुम्बई तथा शाखा कार्यालयों: अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : सीईडी/राजपत्र]

डॉ. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 28th June, 2012

S. O. 2306.— In pursuance of Clause (b) of sub-rule (1) of Rules 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that the Indian Standards, particulars of which are given in the Schedule hereto annexed have been established on the date indicated against each :

SCHEDULE

Sl. No.-	No. & Year of the Indian Standards Established	No. and year of Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 952:2012 Fog Nozzle for Fire Brigade use - Specification (Second revision)	IS 952: 1986	30 June, 2012
2.	IS 2097: 2012 Foam making branch pipe and foam inductor - Specification (Second revision)	IS 2097: 1983	31 May, 2012
3.	IS 2871:2012 Branch pipe universal for fire fighting purpose - Specification (Second revision)	IS 2871:1983	31 May, 2012

Copy of the standards is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi - 110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

D.K. AGRAWAL, Sc. 'F' & Head (Civil Engg.)

नई दिल्ली, 2 जुलाई, 2012

का. आ. 2307.— भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन भारतीय मानकों के विवरण नीचे अनुसूची में दिए गए हैं वे स्थापित हो गए हैं :-

अनुसूची

क्रम संख्या	स्थापित भारतीय मानक (को) की संख्या वर्ष और शीर्षक	नये भारतीय मानक द्वारा अतिक्रमित भारतीय मानक अथवा मानकों, यदि कोई हो, की संख्या और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आई एस 16008 : 2012 कृषि वस्त्रादि - कृषि एवं बागवानी के लिये छाया जाल - विशिष्टि	-	30 जून, 1012

इस भारतीय मानक की प्रतियों भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली - 110002, क्षेत्रीय कार्यालयों नई दिल्ली, कोलकाता, चण्डीगढ़, चैन्नई, मुम्बई तथा शाखा कार्यालय : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयंबटूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं।

[संदर्भ : टी एक्स डी/जी-25]

अनिल कुमार, प्रमुख एवं वैज्ञानिक, 'ई' (टी एक्स डी)

New Delhi, the 2nd July, 2012

S. O. 2307.— In pursuance of Clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued:

SCHEDULE

Sl. No.	No. Title and Year of the Indian Standards	No. and year of the Indian Standards, if any, Superseded by the New Indian Standard	Date of Established
(1)	(2)	(3)	(4)
1.	IS 16008 :2012 Agro Textile - Shade Nets for Agriculture and Horticulture Purposes - Specification	-	30 June, 2012

Copy of this amendment is available for sale with the Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi - 110002 and Regional Offices: New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices: Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: TXD/G-25]

ANIL KUMAR, Sc. 'E' & Head (TXD)

नई दिल्ली, 3 जुलाई, 2012

का. आ. 2308.— भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के नियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग अनुभाग	वर्ष
1.	3837373	25-5-2012	मैसर्स वासवदत्ता सीमेंट प्लाट नं. टी-3 एमआईडीसी चिंचोली तालुका मोहल जिला सोलापुर महाराष्ट्र-413255	पोर्टलैंड पोजोलाना सीमेंट : भाग 1 फ्लाई एस बेस्ड	1489	01	1991
2.	3837272	25-5-2012	मैसर्स वासवदत्ता सीमेंट प्लाट नं. टी-3 एमआईडीसी चिंचोली तालुका मोहल जिला सोलापुर महाराष्ट्र-413255	43 ग्रेड आर्डिनरी पोर्टलैंड सीमेंट	8112		1989
3.	3842669	14-6-2012	मैसर्स कोसल पाइप इंडस्ट्रीज एफ-72 एमआईडीसी कलंब रोड जिला लातूर महाराष्ट्र-413531	पेयजल आपूर्ति के लिए अप्लास्टिक पीवीसी पाइप्स - विशिष्ट	4985		2000
4.	3842871	18-6-2012	मैसर्स थंडर बेवरेजेज गट सं. 29ए कपिल नगर कपिल जिमखाना से आगे वडगांवशेरी, तालुका हवेली जिला पुणे महाराष्ट्र-411014	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543		2004
5.	3806463	18-6-2012	मैसर्स राजूरेश्वर एगोटेक प्रा. लि. गट सं. 97 चंडाई इको तालुका भोकरदान जालना, महाराष्ट्र-431114	पैकेजबंद पेयजल (पैकेजबंद प्राकृतिक मिनरल जल के अलावा)	14543		2004
6.	3842770	18-6-2012	मैसर्स गोविंद मिल्क एंड मिल्क प्राडक्ट्स प्रा. लि. गट सं. 93, 94, 95 गणेशशेरी कोलकी तालुका फलटन जिला सतारा महाराष्ट्र-415523	मलाई निकाला हुआ दूध पावडर - विशिष्ट भाग 2: अतिरिक्त श्रेणी	13334	02	1992

[सं. सी. एम. डी/13 : 11]

बी. एम. हनीफ, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 3rd July, 2012

S. O. 2308.— In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule

SCHEDULE

Sl. No.	Licence No.	Grant Date.	Name & Address of the Party	Title of the Standards	IS No.	Part	Section	Year
1.	3837373	25-5-2012	M/s. Vasavadatta Cement Plot No. T-3 MIDC Chincholi Taluka Mohal District Solapur Maharashtra-413255	Portland pozzolana cement : Part 1 Flyash based	1489	01		1991
2.	3837272	25-5-2012	M/s. Vasavadatta Cement Plot No. T-3 MIDC Chincholi Taluka Mohal District Solapur Maharashtra-413255	43 Grade ordinary portland cement	8112			1989
3.	3832669	14-6-2012	M/s. Kosal Pipe Industries F-72, MIDC Kalamb Road District Latur Maharashtra-413531	Unplasticized PVC Pipes for Potable Water Supplies - Specification	4985			2000
4.	3842871	18-6-2012	M/s. Thunder Beverages Gut No. 29a Kapil Nagar Next To Kapil Gymkhana Vadgaonsheri Taluka Haveli District Pune Maharashtra-411014	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
5.	3806463	18-6-2012	M/s. Rajureshwar Agrotech Pvt Ltd. Gut No. 97, Chandai Eko Taluka Bhokardan Jalna Maharashtra-431114	Packaged drinking water (Other than packaged natural mineral water)	14543			2004
6.	3842770	18-6-2012	M/s. Govind Milk & Milk Products Pvt Ltd. Gut No. 93, 94, 95 Ganeshsheri Kolki Taluka Phaltan District Satara Maharashtra-415523	Skim Milk Powder - Specification - Part 2: Extra Grade	13334	02		1992

[No. CMD/13:11]

B. M. HANEEF, Scientist 'F' and Head

नई दिल्ली, 4 जुलाई, 2012

का. आ. 2309.— भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उप-नियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :-

अनुसूची

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	खण्ड	वर्ष
1.	3841263	11-6-2012	मैसर्स नितिन फायर प्रोटेक्शन इण्डस्ट्रिज लि. ए-117, टीटीसी इण्डस्ट्रियल एरिया, विलेज : खैराने, नवी मुंबई, जिला : ठाणे-400701	सुवाह्य अग्नि शामक -कार्य कारिता और निर्माण	15683			2006
2.	3842467	14-6-2012	मैसर्स नाझ इंजीनियरिंग वर्क्स गट सं. 348 (भाग), भिवंडी - वाडा रोड, विलेज: नरे, पोस्ट: उचाट, तालुका : वाडा, जिला : ठाणे -421312	सुवाह्य अग्नि शामक -कार्य कारिता और निर्माण	15683			2006
3.	3842568	14-6-2012	मैसर्स जेनिय फायर सर्विसेस (इंडिया) प्रा. लि. प्लॉट सं.ए-149/2 टीटीसी इण्डस्ट्रियल एरिया, एमआयडीसी, पावणे विलेज, तुर्भे नवी मुंबई, जिला : ठाणे -400710	सुवाह्य अग्नि शामक -कार्य कारिता और निर्माण	15683			2006

[सं. के प्र वि/13:11]

डॉ. एस. एल. पालकर, निदेशक एवं प्रमुख-प्रमाणन विभाग

New Delhi, the 4th July, 2012

S. O. 2309.— In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule

SCHEDULE

Sl No.	CML No.	GOL Date.	Licensee Name & Address	IS Product	IS No.	Part	Section	Year
1	2	3	4	5	6	7	8	9
1.	3841263	11-6-2012	Nitin fire protection Industries Ltd. A-117, T.T.C. Industrial area, Village - Khairane, Navi Mumbai, Distt - Thane - 400701	Portable Extiguishers, performance and Construction	15683			2006
2.	3842467	14-6-2012	M/s. Naaz Engineering works Gut No. 348 (Part), Bhiwandi - Wada Raod, Village : Nare, Post Uchat, Tal : Wada, Distt : Thane - 421312	Portable Extiguishers, performance and Construction	15683			2006

1	2	3	4	5	6	7	8	8
3.	3842568	14-6-2012	M/s. Zenith FIRE Services (India) Pvt. Ltd. Plot No. A, 149/2, TTC Indl. Area, MIDC, Pawne Village, Turbhe, Navi Mumbai, Distt: Thane - 400710	Portable Extinguishers, 15683 Performance and Construction				2006

[No. CMD/13:11]

Dr. S. L. PALKAR, Director & Head (MDM-II)

नई दिल्ली, 6 जुलाई, 2012

का. आ. 2310.—भारतीय मानक ब्यूरो नियम 1987 के नियम 7 के उप-नियम (1) के खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि नीचे अनुसूची में दिये गये मानक (कों) में संशोधन किया गया/किये गये है :

अनुसूची

क्रम संख्या	संशोधित भारतीय मानक की संख्या और वर्ष	संशोधन की संख्या और तिथि	संशोधन लागू होने की तिथि
(1)	(2)	(3)	(4)
1.	आई एस 778 : 1984	4, अप्रैल 2012	29 -6-2012
2.	आई एस 14846 : 2000	4, अप्रैल 2012	29 -6-2012

इन संशोधनों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन, 9, बहादुर शाह ज़फर मार्ग, नई दिल्ली - 110002, क्षेत्रीय कार्यालयों : नई दिल्ली, कोलकाता, चैन्नई, मुम्बई, चण्डीगढ़ तथा शाखा कार्यालयों : अहमदाबाद, बंगलौर, भोपाल, भुवनेश्वर, कोयम्बतूर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, नागपुर, पटना, पूणे तथा तिरुवनन्तापुरम में बिक्री हेतु उपलब्ध हैं ।

[संदर्भ : सीईडी/राजपत्र]

डी. के. अग्रवाल, वैज्ञानिक 'एफ' एवं प्रमुख (सिविल इंजीनियरी)

New Delhi, the 6th July, 2012

S. O. 2310.—In pursuance of clause (b) of sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules, 1987, the Bureau of Indian Standards hereby notifies that amendments to the Indian Standards, particulars of which are given in the Schedule hereto annexed have been issued :

SCHEDULE

S.I. No.	No. and year of the Indian Standard	No. and year of the amendment	Date from which the amendment shall have effect
(1)	(2)	(3)	(4)
1.	IS 778 : 1984	4, April 2012	29-6-2012
2.	IS 14848 : 2000	4, April 2012	29-6-2012

Copy of these amendments are available for sale with the Bureau of Indian Standards, Manik Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi - 110002 and Regional Offices : New Delhi, Kolkata, Chandigarh, Chennai, Mumbai and also Branch Offices : Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Coimbatore, Guwahati, Hyderabad, Jaipur, Kanpur, Nagpur, Patna, Pune, Thiruvananthapuram.

[Ref: CED/Gazette]

D. K. AGRAWAL, Sc. 'F' & Head (Civil Engg.)

कोयला मंत्रालय**आदेश**

नई दिल्ली, 5 जुलाई, 2012

का. आ. 2311.—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा 1 के अधीन जारी भारत के राजपत्र, भाग -II खंड 3, उप-खंड (ii), तारीख 22 अक्टूबर, 2011 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ. 2991, तारीख 18 अक्टूबर, 2011 पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) या उस पर के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए थे ;

और, केन्द्रीय सरकार का समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर जिसे इसमें इसके पश्चात् उक्त कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का अनुपालन करने के लिए राजामंद है जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे ;

अतः, अब केन्द्रीय सरकार, उक्त अधिनियम की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार निहित भूमि और उक्त भूमि में या उस पर के सभी अधिकार तारीख 22 अक्टूबर, 2011 से केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे अर्थात्

(1) सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, ब्याज, नुकसानियों और वैसे ही मंदों की बाबद किए गए सभी सदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी ;

(2) शर्त (1) के अधीन कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और ऐसे किसी अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के लिए या उनके संबंध में जोकि अपील आदि सभी विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय भी, इस प्रकार सरकारी कंपनी द्वारा वहन किए जाएंगे ;

(3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;

(4) सरकारी कंपनी को, केन्द्रीय सरकार के पूर्व अनुमोदन के बिना, उक्त भूमि को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और

(5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं ।

[फा. सं. 43015/9/2009 पीआरआईडब्ल्यू-1]

ए. कं. दास, अवर सचिव

MINISTRY OF COAL**ORDER**

New Delhi, the 5th July, 2012

S. O. 2311.—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 2991, dated the 18th October, 2011, published in the Gazette of India, Part-II, Section 3, Sub-Section (ii), dated the 22nd October, 2011, issued under Sub-Section (1) of Section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under Sub-Section (1) of Section 10 of the said Act ;

And whereas the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 11 of the said Act, the Central Government hereby direct that the said lands and rights in or over the said lands so vested shall with effect from 22nd

October, 2011 instead of continuing to so vest in the Central Government, shall vest in the Government Company, subject to the following terms and conditions, namely :—

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act ;
2. A Tribunal shall be constituted under Section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under conditions (1) and all expenditure incurred in connection with any such tribunal and persons appointed to assist the tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in or over the said lands, so vested, shall also be borne by the Government Company ;
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said lands so vesting ;
4. The Government Company shall have no power to transfer the said lands to any other persons without the prior approval of the Central Government ; and
5. The Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for particular areas of the said lands, as and when necessary ;

[F. No. 43015/9/2009-PRIW-1]

A.K. DAS, Under Secy.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 3 जुलाई, 2012

का. आ. 2312.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 की धारा 2 के खण्ड (क) के अनुसरण में, नीचे दी गई अनुसूची के स्तंभ 1 में उल्लिखित व्यक्ति को, उक्त अनुसूची के स्तंभ 2 में की तत्स्थानी प्रविष्टि में उल्लिखित क्षेत्र के सम्बंध में उक्त अधिनियम के अधीन सक्षम प्राधिकारी के कृत्यों का निर्वहन करने के लिए प्राधिकृत करती है, अर्थात् :

अनुसूची

प्राधिकारी का नाम और पता	अधिकारिता का क्षेत्र
(1)	(2)
श्री थिरु डी. चन्द्रन सक्षम प्राधिकारी, भूमि अर्जन अधिकारी, तमिलनाडु राज्य, इंडियन ऑयल कॉर्पोरेशन लिमिटेड में प्रतिनियुक्ति पर नियुक्त, पेट्रोलियम पाइपलाइन परियोजनाओं के लिए, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, सक्षम प्राधिकारी का कार्यालय, नं. 10, थिरु वि का स्ट्रीट, राजाजीपुरम, तिरुवल्लूर - 602 001, तमिलनाडु	तमिलनाडु राज्य
यह अधिसूचना जारी होने की तारीख से लागू होगी।	

[सं. आर-25011/14/2012-ओ.आर.1]

लाल छन्दमा, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 3rd July, 2012

S. O. 2312.—In pursuance of Clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the person mentioned in column

(1) of the Schedule given below to perform the functions of the Competent Authority under the said Act, in respect of the area mentioned in column (2) of the said Schedule :—

SCHEDULE

Name and address of the Authority	Area of jurisdiction
(1)	(2)
Shri Thiru D. Chandran Competent Authority, Land Acquisition Officer on Deputation to Indian Oil Corporation Ltd., For Petroleum Pipeline Projects Indian Oil Corporation Ltd., Office of the Competent Authority, No. 10, Thiru-Vi-Ka- Street, Rajajipuram Tiruvallur-602001 (Tamil Nadu)	Tamil Nadu

This notification is applicable from the date of issue.

[No. R-25011/14/2012-OR-I]

LAL CHHANDAMA, Under Secy.

नई दिल्ली, 9 जुलाई, 2012

का.आ. 2313.—केंद्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिम बंगाल राज्य में पारादीप (उड़ीसा) से दुर्गापुर (पश्चिम बंगाल) तक वाया हल्दिया एलपीजी गैस परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड के द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केंद्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि ऐसी भूमि में जो इस से उपाबद्ध अनुसूची में वर्णित है और जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए :

अतः अब, केंद्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन्स (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाए जाने के लिए उसमें उपयोग के अधिकार के अर्जन के सम्बन्ध में श्री एस.सी. सरकार, डब्ल्यू.बी.सी.एस. (प्रशासनिक) संचालित सक्षम प्राधिकारी, पारादीप हल्दिया-दुर्गापुर एलपीजी पाइपलाइन एवम् पारादीप-हल्दिया-बरोनी पाइपलाइन ऑगमेंटेशन योजना, डाकघर दुईल्ला, आन्दुल-मौरी, मौरीग्राम हावड़ा-711 302 (पश्चिम बंगाल) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

पुलिम स्टेशन : साँकराइल		जिला : हावड़ा	राज्य : पश्चिम बंगाल		
क्रम संख्या	मौजा का नाम	खसरा सं.	हेक्टेयर	एयर	क्षेत्रफल वर्ग मी.
(1)	(2)	(3)	(4)	(5)	(6)
1.	भगवतीपुर 7	619	00	04	00
		626	00	04	90
		627	00	04	20
		634	00	02	30
		633	00	02	90
		632	00	01	90

(1)	(2)	(3)	(4)	(5)	(6)
भगवतीपुर-7 (जारी)	640/1053	00	04	80	
	652	00	03	70	
	651	00	05	90	
	650	00	02	40	
	650/1050(सरकारी रास्ता)	00	00	30	
	647	00	01	90	
	160	00	02	90	
	154	00	06	00	
	157	00	02	80	
	156	00	07	20	
	107	00	05	20	
	103	00	00	60	
	106	00	04	50	
	105(सरकारी भूमि)	00	01	50	
	104	00	10	90	
	98	00	02	40	
	99	00	05	90	
	100	00	06	80	
	87	00	00	20	
	88	00	03	30	
	89	00	03	10	
	57	00	00	20	
	56	00	02	90	
	90 (सरकारी रास्ता)	00	01	50	
	90/553 (सरकारी भूमि)	00	00	50	
	2 केन्दुया-5	2270	00	03	60
		2269	00	01	70
		2271	00	01	70
		2278	0	06	70
		2280	00	02	60
2303		00	02	80	
2302		00	02	30	
2304		00	02	40	
2235		00	01	20	
2305		00	03	90	
	2306	00	02	70	

(1)	(2)	(3)	(4)	(5)	(6)
3.	आड़गढ़ि-27	80	00	02	50
		78	00	02	20
		79	00	00	80
		77	00	01	60
		76	00	01	00
		82	00	00	20
		84	00	00	20
		83	00	03	40
		74	00	03	00
		73	00	04	00
4.	जंगलपुर-28	89	00	02	70
		91	00	02	40
		93	00	01	90
		94	00	02	00
		95	00	01	80
		99	00	00	50
		98	00	04	10
		101	00	04	50
		103	00	04	30
		108	00	00	40
		109	00	06	80
		110	0	06	30
		37	00	00	80
		36	00	00	60
		322(ग्रा.पं. भूमि)	00	00	90
		25	00	05	70
		167	00	01	90
		166	00	00	20
		168	00	04	20
		169	00	00	30
		170	00	07	30
		140	00	07	30
		171	00	03	80
		140	00	03	80
		141	00	03	80
		172	00	00	80
		173	00	00	20

(1)	(2)	(3)	(4)	(5)	(6)
जंगलपुर-28 (जारी)		144	00	00	20
		183	00	06	10
		153	00	06	10
		152(ग्राम पं. रास्ता)	00	00	60
		182(ग्राम पं. रास्ता)	00	00	60
		192	00	03	70
		193	00	03	20
		180	00	03	20
		194	00	00	20

[फा. सं. आर-25011/10/2012-ओ आर-1]

लाल छन्दमा, अवर सचिव

New Delhi, the 9th July, 2012

S. O. 2313.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of Liquefied Petroleum Gas from Paradip (Odisha) to Durgapur (West Bengal) Via Haldia a pipeline should be laid in State of West Bengal by Indian Oil Corporation Limited.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said schedule may, within twenty one days from the date on which copies of the Gazette of India containing this notification are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri S.C.Sarkar, W.B.C.S (Exe.)Retd.Competent Authority Paradip - Haldia -Durgapur LPG Pipeline & Augmentation of Paradip - Haldia -Barauni Pipeline Project, P.O,Duillya, Andul - Mouri, Mourigram,Howrah, 711-302 (West Bengal).

SCHEDULE

P.S : SANKRAIL		DISTRICT: HOWRAH		STATE: WEST BENGAL	
Sl. No.	Name of the Mouza	Khasra No.	Area		
			Hectare	Are	Sq.mtr.
(1)	(2)	(3)	(4)	(5)	(6)
I.	BHAGABATIPUR - 7	619	00	04	00
		626	00	04	90
		627	00	04	20
		634	00	02	30
		633	00	02	90
		632	00	01	90
		640/1053	00	04	80
		652	00	03	70
		651	00	05	90

(1)	(2)	(3)	(4)	(5)	(6)
	BHAGABATIPUR - 7 (Contd.)	650	00	02	40
		650/1052(Govt. Road)	00	00	30
		647	00	01	90
		160	00	02	90
		154	00	06	00
		157	00	02	80
		156	00	07	20
		107	00	05	20
		103	00	00	60
		106	00	04	50
		105(Govt. Land)	00	01	50
		104	00	10	90
		98	00	02	40
		99	00	05	90
		100	00	06	80
		87	00	00	20
		88	00	03	30
		89	00	03	10
		57	00	00	20
		56	00	02	90
		90 Govt. Road	00	01	50
		90/553 Govt. Land	00	00	50
2.	KENDUA - 5	2270	00	03	60
		2269	00	01	70
		2271	00	01	70
		2278	0	06	70
		2280	00	02	60
		2303	00	02	80
		2302	00	02	30
		2304	00	02	40
		2235	00	01	20
		2305	00	03	90
		2306	00	02	70
3.	ARGARI - 27	80	00	02	50
		78	00	02	20
		79	00	00	80
		77	00	01	60
		76	00	01	00
		82	00	00	20
		84	00	00	20
		83	00	03	40
		74	00	03	00
		73	00	04	00

(1)	(2)	(3)	(4)	(5)	(6)
4.	JANGALPUR-28	89	00	02	70
		91	00	02	40
		93	00	01	90
		94	00	02	00
		95	00	01	80
		99	00	00	50
		98	00	04	10
		101	00	04	50
		103	00	04	30
		108	00	00	40
		109	00	06	80
		110	00	06	30
		37	00	00	80
		36	00	00	60
		322(G.P. Land)	00	00	90
		25	00	05	70
		167	00	01	90
		166	00	00	20
		168	00	04	20
		169	00	00	30
		170	00	07	30
		140	00	07	30
		171	00	03	80
		140	00	03	80
		141	00	03	80
		172	00	00	80
		173	00	00	20
		144	00	00	20
		183	00	06	10
		153	00	06	10
		152(G.P. Road)	00	00	60
		182(G.P. Road)	00	00	60
		192	00	03	70
		193	00	03	20
		180	00	03	20
		194	00	00	20

[F. No. R-25011 10/2012-OR-I)]

LAL CHHANDAMA, Under Secy.

नई दिल्ली, 9 जुलाई, 2012

का.आ. 2314.—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन अधिनियम, 1962 (1962 का 50) के भाग 2 के खण्ड (क) के अनुसरण में भारत के राजपत्र तारीख 7-4-2012 में प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 1246, तारीख 23 मार्च 2012 में निम्नलिखित रूप से संशोधन करती है, अर्थात् :—

उक्त अधिसूचना की अनुसूची में स्तम्भ 1 में “श्री अरविन्द खरे, संयुक्त संचालक उद्योग (वाणिज्य, उद्योग और रोजगार विभाग), घर नं. 468, सेक्टर-ए, शाहपुरा, भोपाल-462016, मध्य प्रदेश” के स्थान पर “श्री अरविन्द खरे, संयुक्त संचालक उद्योग (वाणिज्य, उद्योग और रोजगार विभाग), मध्य प्रदेश सरकार, गुजरात स्टेट पेट्रोनेट लिमिटेड (मल्लावरम-भोपाल-भीलवाड़ा-विजयपुर नेचुरल गैस पाइपलाइन प्रोजेक्ट), सेक्टर-बी, 9/8 महाकाल वाणिज्य केन्द्र, नानाखेरा, उज्जैन-456010, (मध्य प्रदेश)” शब्द रखे जाएंगे।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. एल-14014/39/2011-जीपी]

ए. गोस्वामी, अवर सचिव

New Delhi, the 9th July, 2012

S. O. 2314.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas S.O. No.1246, dated 23-3-2012 published in the Gazette of India dated 7-4-2012 namely.

“In the said notification in the schedule in column 1 for the words “Shri Arvind Khare, Joint Director Industries, Commerce, Industry & Employment Dept., Government of Madhya Pradesh, House No. 468. Sector-A, Shahpura, Bhopal - 462 016 (Madhya Pradesh)” the words “Shri Arvind Khare, Joint Director Industries, Commerce, Industry & Employment Dept., Government of Madhya Pradesh, Gujarat State Petronet Limited, (Mallavaram - Bhopal - Bhilwara - Vijaipur Natural Gas Pipeline Project), Sector - B, 9/8, Mahakal Vanijya Kendra, Nanakheda, Ujjain - 456 010 (Madhya Pradesh)” shall be substituted.”

This notification will be effective from the date of its issue.

[F. No. L-14014/39/2011-GIP]

A. GOSWAMI, Under Secy.

नई दिल्ली, 9 जुलाई, 2012

का.आ. 2315.—केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खण्ड (क) के अनुसरण में भारत के राजपत्र में प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 1245, तारीख 23 मार्च 2012 में निम्नलिखित रूप से संशोधन करती है, अर्थात् :

उक्त अधिसूचना की अनुसूची में स्तम्भ 1 में ‘श्री अरुण कुमार तलवार (आर.ए.एस.), 16 कृष्णाविहार, नारायण निवास के पास, गोपालपुरा बायपास रोड, जयपुर-302015 राजस्थान’ के स्थान पर “श्री अरुण कुमार तलवार (आर.ए.एस.) सक्षम प्राधिकारी, गुजरात स्टेट पेट्रोनेट लिमिटेड, 16 कृष्णाविहार, नारायण निवास के पास, गोपालपुरा बायपास रोड, जयपुर-302015 राजस्थान”, शब्द रखे जाएंगे।

यह अधिसूचना जारी होने की तारीख से लागू होगी।

[फा. सं. एल-14014/39/2011-जीपी]

ए. गोस्वामी, अवर सचिव

New Delhi, the 9th July, 2012

S. O. 2315.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of user in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas vide S.O. No.1245, dated 23-3-2012 published in the Gazette of India, namely;

“In the said notification in the schedule in column 1 for the words “Shri Arun Kumar Talwar, R. A. S. (Retd.) 16. Krishna Vihar, Near Narayan Niwas, Gopalpura Bypass Road, Jaipur - 302015” the words & figures “Shri Arun Kumar Talwar, [R.A.S.(Retd.)], Competent Authority, Gujarat State Petronet Limited, 16, Krishna Vihar, Near Narayan Niwas, Gopalpura Bypass Road, Jaipur-302015” shall be substituted.”

This notification will be effective from the date of its issue.

[F. No. L-14014/39/2011-GP]

A. GOSWAMI, Under Secy.

नई दिल्ली, 10 जुलाई, 2012

का.आ. 2316.—सक्षम प्राधिकारी, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 17 के अधीन विरचित पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) नियम, 1963 के नियम 4 के उप-नियम (1) के परंतुक के अनुसरण में, गेल (इण्डिया) लिमिटेड के परामर्श से जिसमें, यथास्थिति, उस क्षेत्र में भूमि में उपयोग का अधिकार निहित किया गया है या उस क्षेत्र में पाइपलाइन का स्वामित्व निहित है, नीचे सारणी के स्तम्भ 8 में यथा उल्लिखित गुजरात राज्य के दहेज-वेमार-विजयपुर पाइपलाइन (विस्तार) परियोजना के माध्यम से पाइपलाइन बिछाए जाने के प्रचालन की समाप्ति की तारीख घोषित करता है।

अनुसूची

क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना		धारा 6(1) के अधीन अधिसूचना		कार्य की समाप्ति की दिनांक
			राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	
1.	टीम्बा	लीमखेडा/दाहोद	02/02/2009 एवं 11/03/2011	387(अ) एवं 503(अ)	13/11/2009 एवं 09/12/2010	2887(अ) एवं 2910(अ)	20/04/2012
2.	गुटीया	लीमखेडा/दाहोद	02/02/2009 एवं 11/03/2011	387(अ) एवं 503(अ)	22/09/2009 एवं 09/12/2010	2418(अ) एवं 2910(अ)	20/04/2012
3.	वरबाडा	दाहोद	02/02/2009	387(अ)	13/11/2009	2887(अ)	26/03/2012
क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना		धारा 6(1) के अधीन अधिसूचना		कार्य की समाप्ति की दिनांक
			राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	
1.	कोयडा	देवगढ़ बारीया/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	28/03/2012
2.	डागरिया	देवगढ़ बारीया/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	29/03/2012
3.	बोरखेडा	दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	29/03/2012
4.	जालत	दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	29/03/2012
5.	कटवारा	दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	28/03/2012
6.	कट्टला	दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	28/03/2012
7.	खंगेला	दाहोद	02/02/2009	387(अ)	13/11/2009	887(अ)	29/03/2012
क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना		धारा 6(1) के अधीन अधिसूचना		कार्य की समाप्ति की दिनांक
			राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	
1.	फालोड	वाघोडीया/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	04/02/2012
2.	लिंगस्थली	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	24/03/2012
3.	हालोल	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	30/01/2012

क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना		धारा 6(1) के अधीन अधिसूचना		कार्य की समाप्ति की दिनांक
			राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	
1.	कडाचला	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	20/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
2.	विंटेज	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	21/01/2012
3.	धनसर	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	25/01/2012
4.	ताजपुरा	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	19/01/2012
5.	वांसेटी पानेलाव	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	22/01/2012
6.	गोपीपुरा	हालोल/पंचमहाल	02/02/2009	386(अ)	13/1/2009	2887(अ)	27/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
7.	नुरपुरा	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	29/01/2012
8.	जांबुडी	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	28/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	

क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना		धारा 6(1) के अधीन अधिसूचना		कार्य की समाप्ति की दिनांक
			राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	
1	3	3	4	5	6	7	8
1.	सुवा	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	03/01/2012
2.	जोलवा	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	01/01/2012
3.	रहोयाड	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	23/12/2011
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
4.	अटाली	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	12/12/2011
5.	अखोड	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	03/01/2012
6.	नांदीडा	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	03/01/2012
7.	वहियाल	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	01/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
8.	सायखा	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	27/12/2011
9.	सारन	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	21/12/2011
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
10.	जुनेड	वागरा/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	17/12/2011
11.	आंकोट	वागरा/भरुची	02/02/2009	384(अ)	22/09/2009	2415(अ)	26/12/2011
			09/12/2010	2910(अ)	11/03/2011	503(अ)	

1	2	3	4	5	6	7	8
12.	रहाड	वागरा/भरुच	02/02/2009 09/12/2010	384(अ) 2910(अ)	22/09/2009 11/03/2011	2415(अ) 503(अ)	21/12/2011
13.	वछनाद	वागरा/भरुच	02/02/2009 09/12/2010	384(अ) 2910(अ)	22/09/2009 11/03/2011	2415(अ) 503(अ)	03/01/2012
14.	समनी	आमोद/भरुच	02/02/2009 09/12/2010	384(अ) 2910(अ)	22/09/2009 11/03/2011	2415(अ) 503(अ)	02/01/2012
15.	कारेला	भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	18/12/2011
16.	पादरीया	भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	19/12/2011
17.	कुरचन	भरुच	02/02/2009	384(अ)	जरूरियात नहीं है		01/01/2012
18.	वांतरसा	आमोद/भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	03/01/2012
19.	काठी	आमोद/भरुच	प्रकाशित नहीं हुआ है		प्रकाशित नहीं हुआ है		24/12/2011
20.	मेसराड	करजण/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	22/12/2011
21.	सीमलीया	भरुच	02/02/2009	384(अ)	22/09/2009	2415(अ)	03/12/2011
22.	मांकन	करजण/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	03/01/2012
23.	वलन	करजण/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	03/01/2012
24.	कीया	करजण/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	17/12/2011
25.	अटाली	करजण/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	21/12/2011
26.	ओसलाम	करजण/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	14/12/2011
27.	चोरंदा	करजण/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	29/12/2011
28.	कासमपुर	करजण/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	30/12/2011
29.	कोठाव	करजण/वडोदरा	02/02/2009 09/12/2010	385(अ) 2910(अ)	22/09/2009 11/03/2011	2416(अ) 503(अ)	15/12/2011 18/12/2011
30.	वेमार	करजण/वडोदरा	02/02/2009 09/12/2010	385(अ) 2910(अ)	22/09/2009 11/03/2011	2416(अ) 503(अ)	16/12/2011 03/01/2012

क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना		धारा 6(1) के अधीन अधिसूचना		कार्य की समाप्ति की दिनांक
			राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	
1.	टीम्बी	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	02/02/2009 09/12/2010
2.	ईटवाडी	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	02/02/2009 09/12/2010
3.	सालीयाव	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	02/02/2009 09/12/2010
4.	मलाव	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	02/02/2009 09/12/2010

1	2	3	4	5	6	7	8
5.	अेराल	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	02/02/2009 09/12/2010
6.	चौरबारीया	धानपुर/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	23/12/2011
7.	राय	लीमखेडा/दाहोद	02/02/2009 09/12/2010	387(अ) 2910(अ)	22/09/2009 11/03/2011	2418(अ) 503(अ)	23/12/2011
8.	बार	लीमखेडा/दाहोद	02/02/2009 09/12/2010	387(अ) 2910(अ)	22/09/2009 11/03/2011	2418(अ) 503(अ)	20/12/2011
9.	आंबा	लीमखेडा/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	20/12/2011
10.	पटवान	लीमखेडा/दाहोद	02/02/2009 09/12/2010	387(अ) 2910(अ)	22/09/2009 11/03/2011	2418(अ) 503(अ)	20/12/2011
11.	कठोलीया	लीमखेडा/दाहोद	02/02/2009 09/12/2010	387(अ) 2910(अ)	22/09/2009 11/03/2011	2418(अ) 503(अ)	12/12/2011
12.	जादा	लीमखेडा/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	24/12/2011
13.	खेरीया	लीमखेडा/दाहोद	02/02/2009 09/12/2010	387(अ) 2910(अ)	22/09/2009 11/03/2011	2418(अ) 503(अ)	24/12/2011
14.	मातवा	गरबाडा/दाहोद	02/2/2009	387(अ)	13-11/2009	2887(अ)	19/12/2011
15.	बावका	दाहोद	02/02/2009	387(अ)	13-11-2009	2887(अ)	19/12/2011
16.	गडोई	दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	19/12/2011
क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	धारा 6(1) के अधीन अधिसूचना राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	कार्य की समाप्ति की दिनांक
1	2	3	4	5	6	7	8
1.	बानज	डभोई/वडोदरा	02/02/2009 09/12/2010	385(अ) 2910(अ)	11/03/2011 22/09/2009	503(अ) 2416(अ)	20/01/2012
2.	टीम्बरवा	शिनोर/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	21/01/2012
3.	कायावरोहण	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	19/01/2012
4.	जीयातलावडी	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	22/01/2011
5.	सुलतानपुर	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	27/01/2012
6.	पारीखा	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	29/01/2012
7.	छत्राल	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	01/02/2012
8.	कोठारा	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	05/02/2012
9.	सेजपुरा	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	08/02/2012
10.	ठीकरीया	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	15/01/2012
11.	नारीया	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	18/01/2012
12.	बोरबार	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	26/01/2012

1	2	3	4	5	6	7	8
13.	राजली	डभोई/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	01/02/2012
14.	धुवावी	डभोई/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	09/02/2012
15.	बनैया	डभोई/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	17/01/2012
16.	वायदपुर	डभोई/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	26/01/2012
17.	अबदलापुरा	डभोई/वडोदरा	02/02/2009	385(अ)	13/11/2012	2887(अ)	07/02/2012
18.	कडधरापुरा	डभोई/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	06/02/2012
19.	वनादरा	डभोई/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	05/02/2012
20.	मढेली	वाघोडीया/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	04/02/2012
21.	वेजलपुर	वाघोडीया/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	03/02/2012
22.	वाघोडीया	वाघोडीया/वडोदरा	02/02/2009	385(अ)	13/11/2009	2887(अ)	02/02/2012
23.	टीम्बी	वाघोडीया/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	30/01/2012
24.	माडोधर	वाघोडीया/वडोदरा	02/02/2009 09/12/2010	385(अ) 2910(अ)	11/03/2011 22/09/2009	503(अ) 2416(अ)	19/01/2012
25.	सांगाडोल	वाघोडीया/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	21/01/2012
26.	वेसनीया	वाघोडीया/वडोदरा	02/02/2009	385(अ)	22/09/2009	2416(अ)	03/02/2012
27.	गुताल	वाघोडीया/वडोदरा	02/02/2009 09/12/2010	385(अ) 2910(अ)	11/03/2011 22/09/2009	503(अ) 2416(अ)	09/02/2012
क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना राजपत्र में का.आ. प्रकाशन की संख्या दिनांक		धारा 6(1) के अधीन अधिसूचना राजपत्र में का.आ. प्रकाशन की संख्या दिनांक		कार्य की समाप्ति की दिनांक
1	2	3	4	5	6	7	8
1.	सुलतापनुरा	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ)	15/01/2012
2.	राधनपुर	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	15/01/2012
3.	अभेंटवा	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	15/01/2012
4.	अराद	हालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	18/01/2012
5.	वरवाडा	कालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	18/01/2012
6.	शेरपुरा	कालोल/पंचमहाल	02/02/2009 09/12/2010	386(अ) 2910(अ)	22/09/2009 11/03/2011	2417(अ) 503(अ)	11/01/2012

1	2	3	4	5	6	7	8
7.	करोली	कालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	11/01/2012
8.	सीमलीया	घोघंबा/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	11/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
9.	रीछवाणी	घोघंबा/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	11/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
10.	उधवला	देवगढ़ बारीया/ दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	19/01/2012
11.	गमला	दाहोद	02/02/2009	387(अ)	13/11/2009	2887(अ)	29/01/2012

क्रमांक	गांव का नाम	तालुका/जिला	धारा 3(1) के अधीन अधिसूचना राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	धारा 6(1) के अधीन अधिसूचना राजपत्र में प्रकाशन की दिनांक	का.आ. संख्या	कार्य की समाप्ति की दिनांक
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1	2	3	4	5	6	7	8
1.	तरखंडा	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	15/02/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
2.	वरसडा	हालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	15/02/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
3.	अडादरा	कालोल/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	25/02/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
4.	गोलाव	गोधरा/पंचमहाल	02/02/2009	386(अ)	22/09/2009	2417(अ)	25/01/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
5.	बीलीया	देवगढ़ बारीया/ दाहोद	02/02/2009	386(अ)	22/09/2009	2418(अ)	29/02/2012
			09/12/2010	290(अ)	11/03/2011	503(अ)	
6.	रानीपुरा	देवगढ़ बारीया/ दाहोद	02/02/2009	386(अ)	22/09/2009	2418(अ)	29/02/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
7.	रातडीया	देवगढ़ बारीया/ दाहोद	02/02/2009	386(अ)	22/09/2009	2418(अ)	29/02/2012
			09/12/2010	2910(अ)	11/03/2011	503(अ)	
8.	चेनपुर	देवगढ़ बारीया/ दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	29/02/2012
9.	उचवान	देवगढ़ बारीया/ दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	29/02/2012
10.	देवगढ़	देवगढ़ बारीया/ दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	29/02/2012
11.	सेवाबारी	देवगढ़ बारीया/ दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	01/03/2012

1	2	3	4	5	6	7	8
12.	नगराला	दाहोद/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	01/03/2012
13.	नानीखरज	दाहोद/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	25/01/2012
14.	मोटीखरज	दाहोद/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	24/02/2012
15.	चंदवाणा	दाहोद/दाहोद	02/02/2009	387(अ)	13/11/2009	2887(अ)	24/02/2012
16.	भुयेदी	दाहोद/दाहोद	02/02/2009	387(अ)	22/09/2009	2418(अ)	05/02/2012

[फा. सं. एल-14014/27/2012-जीपी]

ए. गोस्वामी, अवर सचिव

New Delhi, the 10th July, 2012

S.O. 2316.—In pursuance of the proviso to sub-rule (i) of rule 4 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Rules, 1963, framed under Section 17 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Competent Authority, GAIL (India) Limited with whom the right of user in the land in that area has been vested or ownership of the pipeline in that area vests as the case may be, hereby declares the date of termination of operation of laying Dahej - Vemar - Vijaipur pipeline (Expansion) project in Gujarat State as mentioned in column - 8 of the Schedule below, namely :-

SCHEDULE

S. No.	Name of Village	Taluka/Dist	Notification under Section 3 (1)		Notification under Section 6 (1)		Date of termination of Operations
			Date of Publication of Gazette	S.O. No.	Date of Publication of Gazette	S.O. No.	
1.	Timba	Limkheda/Dahod	02/02/2009 &	387(E) &	13/11/2009 &	2887(E) &	20/04/2012
			11/03/2011	503(E)	09/12/2010	2910(E)	
2.	Gutiya	Limkheda/Dahod	02/02/2009 &	387(E) &	22/09/2009 &	2418(E) &	20/04/2012
			11/03/2011	503(E)	09/12/2010	2910(E)	
3.	Vadbara	Dahod	02/02/2009	387(E)	13/11/2009	2887(E)	26/03/2012
1.	Koyada	D. Bariya/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	28/03/2012
2.	Dangariya	D. Bariya/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	29/03/2012
3.	Borkheda	Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	29/03/2012
4.	Jalat	Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	29/03/2012
5.	Katvara	Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	28/03/2012
6.	Kathall	Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	28/03/2012
7.	Khangela	Dahod	02/02/2009	387(E)	13/11/2009	2887(E)	29/03/2012

Sr. No.	Name of Village	Taluka/Dist	Notification under Section 3 (1)		Notification under Section 6 (1)		Date of termination of Operations
			Date of Publication of Gazette	S.O. No.	Date of Publication of Gazette	S.O. No.	
1.	Falod	Vagodiya/Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	04/02/2012
2.	Lingasthali	Dabhoil/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	24/03/2012
3.	Halol	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	30/01/2012

Sr. No.	Name of Village	Taluka/Dist	Notification under Section 3 (1)		Notification under Section 6 (1)		Date of termination of Operations
			Date of Publication of Gazette	S.O. No.	Date of Publication of Gazette	S.O. No.	
1.	Kadachhla	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	20/01/2012
			09/12/2010	2910(E)	11/03/2011	503(E)	
2.	Vintoj	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	21/01/2012
3.	Dhansar	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	25/01/2012
4.	Tajpura	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	19/01/2012
5.	Vaseti & Panclav	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	22/01/2012
6.	Gopipura	Halol/Panchmahal	02/02/2009	386(E)	13/11/2009	2887(E)	27/01/2012
			09/12/2010	2910(E)	11/03/2011	503(E)	
7.	Nurpura	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	29/01/2012
8.	Jambudi	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	28/01/2012
			09/12/2010	2910(E)	11/03/2011	503(E)	

Sr. No.	Name of Village	Taluka/Dist	Notification under Section 3 (1)		Notification under Section 6 (1)		Date of termination of Operations
			Date of Publication of Gazette	S.O. No.	Date of Publication of Gazette	S.O. No.	
1	2	3	4	5	6	7	8
1.	Suwa	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	03/01/2012
2.	Jolwa	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	01/01/2012
3.	Rahiyad	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	23/12/2011
			09/12/2010	2910(E)	11/03/2011	503(E)	
4.	Atali	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	12/12/2011
5.	Akhod	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	03/01/2012
6.	Nandida	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	03/01/2012
7.	Wahiyal	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	01/01/2012
			09/12/2010	2910(E)	11/03/2011	503(E)	
8.	Saykha	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	27/12/2011
9.	Saran	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	21/12/2011
			09/12/2010	2910(E)	11/03/2011	503(E)	
10.	Juned	Vagra/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	17/12/2011

1	2	3	4	5	6	7	8
11.	Annkot	Vagra/ Bharuch	02/02/2009 09/12/2010	384(E) 2910(E)	22/09/2009 11/03/2011	2415(E) 503(E)	26/12/2011
12.	Rahad	Vagra/ Bhatuch	02/02/2009 09/12/2010	384(E) 2910(E)	22/09/2009 11/03/2011	2415(E) 503(E)	21/12/2011
13.	Vachhnad	Vagra/ Bharuch	02/02/2009 09/12/2010	384(E) 2910(E)	22/09/2009 11/03/2011	2415(E) 503(E)	03/01/2012
14.	Samni	Amod/ Bharuch	02/02/2009 09/12/2010	384(E) 2910(E)	22/09/2009 11/03/2011	2415(E) 503(E)	02/01/2012
15.	Karela	Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	18/12/2011
16.	Padriya	Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	19/12/2011
17.	Kurchan	Bharuch	02/02/2009	384(E)	Not Required		01/01/2012
18.	Wantarsa	Amod/ Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	03/01/2012
19.	Kothi	Amod/ Bhatuch	Not Published		Not Published		24/12/2011
20.	Mesrad	Karjan/Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	22/12/2011
21.	Simliya	Bharuch	02/02/2009	384(E)	22/09/2009	2415(E)	03/12/2011
22.	Makan	Karjan/Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	03/01/2012
23.	Valan	Karjan/Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	03/01/2012
24.	Kiya	Karjan/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	17/12/2011
25.	Atali	Karjan/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	21/12/2011
26.	Oslam	Karjan/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	14/12/2011
27.	Choranda	Karjan/Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	29/12/2011
28.	Kasampur	Karjan/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	30/12/2011
29.	Kothav	Karjan/Vadodara	02/02/2009 09/12/2010	385(E) 2910(E)	22/09/2009 11/03/2011	2416(E) 503(E)	15/12/2011 18/12/2011
30.	Vemar	Karjan/Vadodara	02/02/2009 09/12/2010	385(E) 2910(E)	22/09/2009 11/03/2011	2416(E) 503(E)	16/12/2011 03/01/2012

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			Date of Publication of Gazette	S.O. No.	Date of Publication of Gazette	S.O. No.	
1	2	3	4	5	6	7	8
1.	Timbi	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	10/12/2011
2.	Itwadi	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	10/12/2011
3.	Saliyav	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	15/12/2011
4.	Malav	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	15/12/2011

1	2	3	4	5	6	7	8
5.	Aeral	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	15/12/2011
6.	Chorbariya	Dhanpur/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	23/12/2011
7.	Rai	Limkheda/Dahod	02/02/2009 09/12/2010	387(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	23/12/2011
8.	Bar	Limkheda/Dahod	02/02/2009 09/12/2010	387(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	20/12/2011
9.	Amba	Limkheda/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	20/12/2011
10.	Patvan	Limkheda/Dahod	02/02/2009 09/12/2010	387(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	20/12/2011
11.	Katholiya	Limkheda/Dahod	02/02/2009 09/12/2010	387(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	12/12/2011
12.	Jada	Limkheda/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	24/12/2011
13.	Kheriya	Limkheda/Dahod	02/02/2009 09/12/2010	387(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	24/12/2011
14.	Matva	Garbada/Dahod	02/2/2009	387(E)	13/11/2009	2887(E)	19/12/2011
15.	Bavka	Dahod	02/02/2009	387(E)	13/11/2009	2887(E)	19/12/2011
16.	Gadoi	Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	19/12/2011

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1.	Banaj	Dabhoi/Vadodara	02/02/2009 09/12/2010	385(E) 2910(E)	11/03/2011 22/09/2009	503(E) 2416(E)	20/01/2012
2.	Timbarva	Sinor/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	21/01/2012
3.	Kayavarohan	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	19/01/2012
4.	Jiyatalavadi	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	22/01/2011
5.	Sultanpura	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	27/01/2012
6.	Parikha	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	29/01/2012
7.	Chhatral	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	01/02/2012
8.	Kothara	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	05/02/2012
9.	Sejpur	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	08/02/2012
10.	Thikariya	Dabhoi/Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	15/01/2012

1	2	3	4	5	6	7	8
11.	Nariya	Dabhoi/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	18/01/2012
12.	Borbar	Dabhoi/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	26/01/2012
13.	Rajli	Dabhoi/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	01/02/2012
14.	Thuvavi	Dabhoi/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	09/02/2012
15.	Banaiya	Dabhoi/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	17/01/2012
16.	Vayadpura	Dabhoi/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	26/01/2012
17.	Abdalapura	Dabhoi/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	07/02/2012
18.	Kadadhapura	Dabhoi/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	06/02/2012
19.	Vanadara	Dabhoi/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	05/02/2012
20.	Madheli	Vaghodiya/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	04/02/2012
21.	Vejalpur	Vaghodiya/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	03/02/2012
22.	Vaghodiya	Vaghodiya/ Vadodara	02/02/2009	385(E)	13/11/2009	2887(E)	02/02/2012
23.	Timbi	Vaghodiya/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	30/01/2012
24.	Madodhar	Vaghodiya/ Vadodara	02/02/2009 09/12/2010	385(E) 2910(E)	11/03/2011 22/09/2009	503(E) 2416(E)	19/01/2012
25.	Sangadol	Vaghodiya/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	20/01/2012
26.	Vesaniya	Vaghodiya/ Vadodara	02/02/2009	385(E)	22/09/2009	2416(E)	03/02/2012
27.	Gutal	Vaghodiya/ Vadodara	02/02/2009 09/12/2010	385(E) 2910(E)	11/03/2011 22/09/2009	503(E) 2416(E)	09/02/2012

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1	2	3	4	5	6	7	8
1	Sultanpura	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E)	15/01/2012
2	Radhanpur	Halol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	15/01/2012
3	Abhetwa	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	15/01/2012
4	Arad	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	18/01/2012
5	Varvada	Kalol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	18/01/2012
6	Sherpura	Kalol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	11/01/2012
7	Karoli	Kalol/Panchmahal	02/02/2009	386(E)	22/09/2009	2417(E)	11/01/2012
8	Simaliya	Ghoghamba/ Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	11/01/2012
9	Richwani	Ghoghamba/ Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	11/01/2012
10	Udhavala	Devgadh Baria/ Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	19/01/2012
11	Gamla	Dahod	02/02/2009	387(E)	13/11/2009	2887(E)	29/01/2012
Sr. No.	Name of Village	Taluka/Dist	Notification under Section 3 (1)		Notification under Section 6 (1)		Date of termination of Operations
			Date of Publication of Gazette	S.O. No. Date	Date of Publication of Gazette	S.O. No. Date	
1	Tarkhanda	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	15/02/2012
2	Varsada	Halol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	15/02/2012

1	2	3	4	5	6	7	8
3	Adadara	Kalol/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	25/02/2012
4	Golav	Godhra/Panchmahal	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2417(E) 503(E)	25/01/2012
5	Biliya	Devgadh Baria/ Dahod	02/02/2009 09/12/2010	385(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	29/02/2012
6	Ranipura	Devgadh Baria/ Dahod	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	29/02/2012
7	Ratadiya	Devgadh Baria/ Dahod	02/02/2009 09/12/2010	386(E) 2910(E)	22/09/2009 11/03/2011	2418(E) 503(E)	29/02/2012
8	Chenpur	Devgadh Baria/ Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	29/02/2012
9	Uchvan	Devgadh Baria/ Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	29/02/2012
10	Devgadh	Devgadh Baria/ Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	29/02/2012
11	Ruvabari	Devgadh Baria/ Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	01/03/2012
12	Nagarala	Dahod/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	01/03/2012
13	Nanikharaj	Dahod/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	25/01/2012
14	Motikharaj	Dahod/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	24/02/2012
15	Chandvana	Dahod/Dahod	02/02/2009	387(E)	13/11/2009	2887(E)	24/02/2012
16	Bhutodi	Dahod/Dahod	02/02/2009	387(E)	22/09/2009	2418(E)	05/02/2012

[F. No. L-14014/27/2012-GP]

A. GOSWAMI, Under Secy.

नई दिल्ली, 13 जुलाई, 2012

का.आ. 2317.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 2 के खंड (क) के अनुसरण में उक्त अधिनियम के अधीन राजस्थान राज्य के भीतर गेल (इण्डिया) लिमिटेड की विजयपुर-कोटा और स्पर, छायासा-झझर और स्पर, दहेज-विजयपुर और स्पर, विजयपुर-दादरी और स्पर, जामनगर-लोनी और स्पर, डण्डेवाला-गमनेवाला और स्पर, लंगतला-रामगढ़ और स्पर, एच बी जे और स्पर, ग्रेप और स्पर पाइपलाईनों के लिए सक्षम अधिकारी के कार्यों का निर्वहन करने के लिए श्री जनक सिंह, तहसीलदार, राजस्थान सरकार को प्राधिकृत करती है।

[फा. सं. एल-14014/16/2012-जीपी]

ए. गोस्वामी, अवर सचिव

New Delhi, the 13th July, 2012

S.O. 2317.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), Central Government hereby authorizes Shri Janak Singh, Tehsildar, Government of Rajasthan to perform the functions of Competent Authority for Vijaipur - Kota and spur, Chhainsa-Jhajjar & spur, Dahej-Vijaipur & spur, Vijaipur-Dadri & spur, Jamnagar-Loni & spur, Dandewalan-Gamnewalan & spur, Langtala-Ramgarh & spur, HVJ & spur, GREP & spur pipeline of GAIL (India) Limited, under the said Act, within the territory of Rajasthan State.

[F. No. L-14014/16/2012-G.P.]

A. GOSWAMI, Under Secy.

श्रम और रोजगार मंत्रालय

नई दिल्ली, 11 जून, 2012

का.आ. 2318.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आफिसर-इन चार्ज, मिलिट्री फार्म डिपो, कामटी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/84/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-6-2012 को प्राप्त हुआ था।

[सं. एल-14012/40/1993-आईआर (डीयू)]

रमेश सिंह, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th June, 2012

S.O. 2318.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/NGP/84/2003) of the Central Government Industrial Tribunal-Cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the officer-in-charge, Military Farm Depot, Kamptee and their workman, which was received by the Central Government on 11-6-2012.

[No. L-14012/40/1993-IR(DU)]

RAMESH SINGH, Desk Officer

ANNEXURE**BEFORE SHRI J.P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/84/2003

Date: 14-5-2012

Party No.1 : Prakash Nathuji Tiwaskar
R/o. Gora Bazar Kamptee,
Distt. Nagpur.

Versus

Party No.2 : Officer-in-charge,
Military Farm Depot, Kamptee,
District Nagpur.

AWARD

(Dated: 14th May, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of Military Farm Depot, Kamptee and their workman, Shri Prakash Nathuji Tiwaskar, for adjudication, to CGIT-Cum-Labour Court, Jabalpur as per letter No. L-14012/40/93-IR (DU) dated 10-11-94, with the following schedule :

"Whether the action of the management of Military Farm Depot, Kamptee in terminating the service of Shri Prakash Nathuji Tiwaskar, Daily rated Mazdoor w.e.f. 11-12-89 is legal & justified? If not, to what relief the workman is entitled?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Prakash Nathuji Tiwaskar "the workman" in short), filed the statement of claim and the management of the Military Farm Depot, Kamptee ("Party No. 1" in short) filed its written statement.

The case of the workman is that he was in continuous employment of party no. 1 since 01-08-1986 and his initial appointment was as an un-skilled labourer on daily wages of Rs. 9.25 per day and after sponsoring of his name by the employment exchange, he got Rs. 16 per day and he was working for all the seven days in a week, without availing of Sundays or weekly days of off and he was performing his duties sincerely and honestly and there was no complaint against him from his superiors and his service record was clean and unblemished and he was performing all type of works, such as, Chowkidar, Labourer, Light Vehicle Driver etc. as per the orders of his superiors and he was very much hopeful that he would be absorbed as a permanent employee, in view of his continuous, uninterrupted and meritorious service for more than 3 years, but all of a sudden, his services were terminated by the party no. 1, by office order no. E-5/EE dated 11-12-1989 and the said order was issued with the sole intention to deprive him from his legitimate right and benefits of employment, accrued under labour law and at the time of termination of his services, he was not given any opportunity to make representation against the said order and no notice or notice pay in lieu of notice or retrenchment compensation was given to him, as required under Section 250-F of the Act and thus, the termination order dated 11-12-1989 was per-se-illegal, bad in law and against the principles of natural justice and though there was ample work with party no. 1, his services were terminated by party no. 1, by giving complete go by to the normal procedure of retrenchment and by practicing unfair labour practices and by way of victimization and in colourable exercise of powers and after his termination, he approached party no. 1 and requested for reinstatement in service, but his request was not considered and as such, by letter dated 22-12-1989, he moved an appeal before the Deputy Director of Military Farm, Head quarter Southern Command Kirkee, Pune-3, but his such appeal was also not considered by the concerned authority and therefore, he was constrained to issue a legal notice through his advocate on 01-02-1990, calling the party no. 1 to withdraw the order of termination dated 12-11-89 and to reinstate him in service, with

continuity and full back wages, but party no. 1 failed to comply with the same, but in response to his legal notice, party no. 1 vide office letter no. ES/EE dated 25-04-1990 gave him an offer to give his willingness to work in other farm by 30-04-1990 and by his willingness letter dated 25-04-1990, he made it clear that he was ready and willing to work anywhere as would be offered by the party no. 1, but the party no. 1 did not give him any letter of reinstatement and when his repeated representations did not yield any result, he raised the industrial dispute before the ALC (C) on 29-07-1993 and the party no. 1 admitted before the ALC about his services and termination order dated 11-12-1989, but falsely claimed of having no vacancy and to reinstate him in future, in case of any post falling vacant and in his rejoinder dated 19-08-1993 before the ALC, he mentioned about the retirement of chowkidar, Jagan Sona More at the end of August, 1993 and that he could be adjusted in his place and the party no. 1 made number of fresh appointment at Military Farm Depot, Khadni and other dairy farms, after his termination.

The workman has prayed for his reinstatement in service with continuity and full back wages.

3. The party no. 1 in its written statement has pleaded inter-alia that it is directly under the control of the Government of India, Ministry of Defence, and the Ministry of Defence allots land, finance and the necessary infrastructure for military farms depots and the products of such depots are only for the defence personnel and its activities do not come within the ambit of "industry" as per the definition of Section 2 (j) of the Act and the Act is not applicable to it and as such, the reference is not maintainable and as this point goes to the root of the case, it is necessary to decide the said issue before embarking on the merit of the case. It is further pleaded by party no. 1 that the workman was engaged as a casual labourer on daily wages on purely temporary basis w.e.f. 1987 and not earlier to that and such casual employment was not on permanent basis and since it has fixed permanent post on which, the workman was having no lien, he cannot claim any permanency on the post and the allegation of the workman about his not availing one day weekly off is not correct and the casual nature of the workman was a fixed one and as the engagement of the workman was purely of temporary nature, he was not regularized in the services and as the nature of the employment of the workman was purely of casual nature, his services was put to an end, when there was no workload. It is further pleaded by party no. 1 that when the authority came to know about the nonpayment of the legal dues of the workman at the time of termination of his services, the same was offered to him later on, but the workman declined to accept the same and as such, it cannot be said that the workman was not paid the terminal dues, even though the same were not binding on it, because of the legal submissions as raised by it and as mentioned above and the Government stopped the

purchase of milk from petty contractors, because of availability of milk in the depots and therefore, there was no workload on the casual labour and permanent staff and thirteen depots including MFD Kamptee were closed down as per the instruction of the Government, Ministry of Defence and as such, the services of the workman were not required and it was very difficult to the administration to adjust even the regular employees in the Military Farms departments and the regular employees of MFD Kamptee were adjusted/posted in other departments through AG's Branch, Army Hq, New Delhi and no casual labour was appointed in place of Jagan Sona More, who retired in August, 1993 and in view of such situations, the reinstatement of the workman is not quartet and it is ready to pay one month's salary in lieu of notice and fifteen days salary for each completed years of service as compensation to the workman for termination of his services. The party no. 1 has also taken the plea that the reference is barred by limitation and as such, the same cannot be entertained.

4. In his rejoinder, the workman has pleaded that the party no. 1 is an "industry" as per Section 2(j) of the Act and the Act is applicable to party no. 1.

5. Besides placing reliance on documentary evidence the workman examined himself as a witness in support of his claims. The workman in his evidence, which is on affidavit, has reiterated the facts mentioned in the statement of claim.

The evidence of the workman remained unchallenged, as none appeared on behalf of the party no. 1 to cross-examine him. No evidence was produced on behalf of the party no. 1.

6. It is necessary to mention here that after transfer of the reference from the Central Government Industrial Tribunal, Jabalpur to this Tribunal, notices were sent to the parties and in response to such notice, the workman appeared on 15-09-2005 and the representative of party no. 1, Shri Shyamlal Yadav appeared on 08-02-2007. However, after 08-02-2007, none appeared in the case on behalf of the party no. 1, so order was passed to proceed ex parte against the party no. 1 on 28-03-2007 and as per order dated 08-08-2007; the case was closed and posted for award.

It is also necessary to mention here that no award was passed by my predecessor-in-office, till his retirement. So after my joining as the Presiding Officer, in the interest of justice, parties were noticed for rehearing of argument as per order dated 23-08-2010. In response to the notice, the workman appeared on 23-11-2010. On 17-01-2011, Shri Sashikanta Bangde, Central Government Counsel filed memo of appearance on behalf of the party no. 1 and filed an application for adjournment of the case for argument and the case was adjourned to 11-04-2011. On 11-04-2011 also advocate for the party no. 1 took adjournment for argument. On 29-09-2011 also, advocate for the party no. 1 filed application for time for argument and the case was

adjourned to 28-11-2011. On 28-11-2011 and thereafter, neither the party no. 1 nor anybody on behalf of party no. 1 appeared in the case to make argument. So argument was closed on 23-1-2012 and the case was posted for award.

7. The party no. 1 has raised the objection that it is not an industry as defined under Section 2(j) of the Act and the provisions of the Act are not applicable to it. However, from the pleadings of party no. 1 and applying the principles enunciated by the Hon'ble Apex Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa, 1978 (36) FLR 266 to this case, it is found that the party no. 1 is an industry as defined under Section 2 (j) of the Act and the provisions of the Act are applicable to it.

The party no. 1 has also raised the objection that the reference is barred by limitation and cannot be entertained. It is to be mentioned here that limitation Act has no application to industrial dispute. Moreover, it is clear from the materials on record that the workman was continuously making representations for his reinstatement in service and when he was unsuccessful in his attempts, he raised the industrial dispute and his claim is not a belated one. Hence, it is found that there is no force in the objections raised by party no. 1.

8. Perused the record including the pleadings of the parties and the evidence produced by the workman and found that the party no. 1 though has disputed the initial date of employment of the workman with it, has not disputed the claim of the workman working continuously till 11-12-1989 and termination of his service by office order dated 11-12-1989. However, the document, i.e. certificate granted by Officer-in-charge, Military Farm Depot, Kamptee shows that the initial employment of the workman was w.e.f. 01-08-1986 and not 1987 as claimed by the party no.1. It is also clear from the materials on record that though the workman had completed 240 days of work in the preceding 12 months of 11-12-1989, neither one month's notice nor one month's pay in lieu of notice or retrenchment compensation was given to the workman, while terminating his services by party no. 1. So there was no compliance of the mandatory provisions of the workman were in violation of Section 25- F of the Act, the same amounts to retrenchment.

The workman was appointed as a daily wager by party no. 1 on 01-08-1986 and his engagement continued up to 11-12-1989 i.e. about 23 years back. It is also pleaded by party no. 1 that 13 MFD including that of Kamptee have already been closed and the regular employees have been adjusted in other departments. In a case, such as the present one, it is found that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In my considered opinion, the compensation of Rs. 1,00,000 (Rupees one lakh only) in lieu of reinstatement shall be just, appropriated and equitable. Hence, it is ordered:—

ORDER

The action of the management of Military Farm Depot, Kamptee in terminating the services of Shri Prakash Nathuji Tiwaskar, daily rated mazdorr w.e.f. 11-12-89 is illegal and unjustified. The workman is entitled to monetary compensation of Rs. 1,00,000 (Rupees One lakh only). The party no. 1 is directed to comply the award within a month of the publication of the award in the official gazette, failing which, the amount shall carry interest at the rate of eight percent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 जून, 2012

का.आ. 2319.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ़ जर्नल मैनेजर, बीएसएनएल, फरीदाबाद के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट (संदर्भ संख्या 46, 47, 48, 49/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-2012 को प्राप्त हुआ था।

[सं. एल-40012/42, 43, 44, 45/2010-आईआर (डीयू)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 13th June, 2012

S.O. 2319.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 46, 47, 48, 49/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the Chief General Manager, BSNL, Faridabad and their workman, which was received by the Central Government on 13-6-2012.

[No. L-40012/42, 43, 44, 45/2010-IR (DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 46/2010

Shri Chaman Lal

S/o Shri Mahender Singh,

C/o Shri Hoob Lal, 530,

Near Prem Public School,

Dayal Nagar, Post - Amar Nagar,

Faridabad

... Workman

Versus

The General Manager,
BSNL, Telephone Exchange,
Sector 15-A,
Faridabad.

...Management

AWARD

On 18-2-2009 a demand notice was sent by Shri Chaman Lal son of Shri Mahender Singh to General Manager, Bharat Sanchar Nigam Ltd., (in short the Nigam) pleading therein that he was working with the Nigam as Lineman since July, 1997. His last drawn wages were Rs.5000 P.M. He claimed therein that his work was satisfactory and he never gave any chance of complaint to his superiors. His wages for the months of October and November 2008 and payment for over time work were not released in his favour. When he raised demand for payment of wages and over time allowance, his services were dispensed with on 2-12-2008. He claimed that the action of the Nigam was violative of the provisions of Industrial Disputes Act, 1947 (in short the Act). He called upon the Nigam to reinstate his services with continuity and full back wages. When no response to the said demand was received, Shri Chaman Lal raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal, vide order No. L-40012/42/2010-IR(DU) New Delhi, dated 30th September, 2010, with following terms:—

“Whether the action of the management of Bharat Sanchar Nigam Limited, Faridabad, in terminating the services of their workman Shri Chaman Lal, Lineman with effect from 2-12-2008 is legal and justified? If not, what relief the workman is entitled to?”

2. Claim statement was filed by Shri Chaman Lal pleading therein that he was employed with the Nigam since July, 1997. He was working as Lineman and drawing monthly wages of Rs. 5000. His services were terminated by the Nigam on 2-12-2008, by a verbal order. He projects that refusal of duty amounts to termination of his services which fall within the ambit of retrenchment as defined by the Act. According to him, act of the Nigam amounts to unfair labour practice, since a new employee has been engaged in his place. He unfolds that he is unemployed since the date of termination of his services. A demand notice was sent to the Nigam on 18-2-2009. He seeks an award in his favour for reinstatement of his services with continuity and full back wages.

3. Claim was demurred by the Nigam pleading that there existed no relationship of employer and employee between the parties. At no point of time, the claimant was engaged by the Nigam as Lineman. His claim that he was engaged since July, 1997 is false, projects the Nigam. Since claimant was never engaged, there was no question of termination of his service with effect from 2-12-2008. Provisions of the Act were not violated by the Nigam. It

has been admitted that a demand notice dated 18-2-2009 was served, which was based on false facts. A claim has been made that case projected by the claimant may be discarded, being devoid of merits.

4. On pleadings of parties the following issues were settled :—

(i) Whether there existed no relationship of employer and employee between the parties?

(ii) In terms of reference

(iii) Relief.

5. To discharge onus resting on him, the claimant has examined himself and Shri Ram Prakash, Telecom Technical Assistant. Shri Hari Singh Meena entered the witness box on behalf of the Nigam to dispel facts projected on behalf of the claimant. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Hub Lal Yadav and Sumer Singh, authorized representatives, advanced arguments on behalf of the claimant. Shri Deepak Thukral, authorized representative, presented facts on behalf of the Nigam. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

ISSUE No.1

7. Affidavit Ex.WW-1/A was tendered as evidence by the claimant, swearing there in that he joined the Nigam in July 1997 as a Lineman. He worked continuously with the Nigam. He never gave chance of complaint to his superiors. He was initially engaged in Hodal Exchange. In case of exigencies, he was sent to Palwal Exchange also for job. He used to perform duties for 12 hours in a day. His wages for the months of October and November 2008 and over time allowance were not released. When he raised a demand, his services were terminated on 2-12-2008 orally. A new Lineman has been engaged in his place. Act of Nigam amounts to unfair labour practice and violative of the provisions of the Act. He worked for more than 240 days in every calendar year. Besides his affidavit he placed reliance on documents Ex.WW-1/1 to Ex.WW-1/18. During the course of his cross examination, he concedes that no appointment letter was issued in his favour. According to him Ex.WW-1/1 to Ex.WW-1/16 were prepared by Shri Ram Parkash, Telecom Technical Assistant. He projects that he obtained photocopies of the attendance register from Shri Sunil Kumar, his colleague. Whenever wages were paid to him, his signatures were obtained on form AC-17.

8. Shri Ram Parkash, Telecom Technical Assistant, entered the witness box and unfolded that there were 17-18 Gramin Exchange under his control. As and when there was a fault in any of the Gramin Exchange, he was supposed to attend that fault. None worked under him. He declared that claimant is not known to him. Ex.WW1/1 to Ex.WW1/

16 are neither in his hand nor bear his signatures. He asserts that in Ex.WW1/1 to Ex.WW1/16 names of Satish Kumar, Manoj Kumar, Sunil Kumar, and Chaman Lal do appear. None of them have worked under Shri Om Parkash, V.K. Jain, M.S. Chauhan, V.K. Joshi, Subhash, M.L. Gaur, Rajpal Singh and Satinder Singh Srivastava, S.D.O's, Hodal Group area at different spell of time. He projects that he himself, Pural Lal, Khushiali, Bhawar Singh, Chander Singh, Babu Ram and Amar Chand had worked under the aforesaid Officers. He never saw Chaman Lal, Sunil Kumar, Manoj Kumar and Satish ever working with the Nigam.

9. Hari Singh Meena testified that the claimant was never employed by the Nigam at any point of time. He declares that in July 1997 he was posted at Hisar. He joined Faridabad in 2006 and had detailed facts on the basis of record. The claimant was not engaged as Lineman in July 1997. Since he was never employed by the Nigam, there was no question of his serving with sincerity, honesty and to the satisfaction of his superiors. Since the claimant was not employed with the Nigam, there was no occasion for the Nigam to terminate his services on 2-12-2008. He expressed ignorance as to whether claimant ever worked at Hodal Exchange, as an employee of a contractor. He announces that Ex.WW1/1 to Ex.WW1/16 do not pertain to the Nigam. During the course of his cross-examination, he presents that Ram Parkash, Pural Lal, Khushiali, Bhawar Singh, Madan Singh, Babu Ram, Amar Chand, Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal have worked with the Nigam. He explained that he had not brought their attendance record. According to him, Data Ram, Vinod, Bhawar Singh, Pural Lal, Gopal Sharma, Aherwan Vats, Devdatt Sharma, Manju, Kamla and Gyanvati are employed by the Nigam. He disputed that the claimant had worked with the Nigam since 1997 till December 2006.

10. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service can be entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there

must have been some act or contract by which the parties recognized one another as master or servant.

11. It would be ascertained whether the claimant has been able to establish that he was employed by the Nigam. For that purpose facts unfolded by the claimant, Ram Parkash and Hari Singh Meena are to be appreciated. Claimant details that he was engaged by the management in July 1997 as a Lineman. According to him no letter of appointment was issued in his favour. With a view to project that he worked with the Nigam, he has relied upon documents Ex.WW-1/1 to Ex.WW-1/16 which are photocopies of alleged attendance register maintained by the Nigam. According to him Ex.WW1/1 to Ex.WW-1/16 bear his signatures and of Shri Ram Parkash, Telecom Technical Assistant. However facts unfolded by the claimant were dispelled by Ram Parkash when he entered the witness box. Shri Ram Parkash declares that Ex.WW1/1 to Ex.WW1/16 are neither in his hand nor bear his signatures. This fact makes it clear that genuineness of Ex.WW-1/1 to Ex.WW-1/16 came under clouds. Unambiguous testimony of Ram Parkash discarded the claim to the effect that the claimant marked his attendance on Ex.WW1/1 to Ex.WW1/16 which fact was verified by TTE serving the Nigam. Consequently it is emerging over the record that the documents relied by the claimant, nowhere espouse his cause. These documents cannot be read in favour of the claimant, since the officer, who was claimed to have verified the attendance record, had branded them to be forged and fabricated.

12. The claimant places reliance on ocular facts detailed by him in his affidavit Ex.WW1/A. As detailed therein, he testifies that he joined the Nigam in July 1997 as a Lineman and worked as such till 2-12-2008. For a long period of 12 years he served the Nigam, as projected by him in his affidavit. But neither an appointment letter nor any document is pressed in service by the claimant to substantiate ocular facts. Even otherwise his testimony comes in conflict with the facts, which are nearer to the truth. He wants this Tribunal to believe that in November 2008 his salary was Rs. 5000 per month. In 5th Central Pay Commission a scale of Rs. 2550-55-2660-60-3200 was recommended for Group 'D' employees. Assuming that the claimant joined service in July 1997, then he would have earned 12 increments in scale "S1" and his basic pay would have been fixed at Rs. 3200 as on January 2008. On this basic pay, dearness allowance, HRA and other allowances, if added would enhance net amount to more than Rs. 7000. These aspects demolish his testimony to the effect that he was getting a sum of Rs. 5000 per month in November 2008. His testimony is found farther from truth when it was considered from angle referred above. However a Lineman would get his pay in scale "S3" recommended by 5th Central Pay Commission and if calculated, pay of a Lineman would be higher than Rupees ten thousands a month in November

2008. Consequently it is evident that the claimant have projected false facts in that regard. Had he been working as an employee with the Nigam, he would have been drawing much more salary than a sum of Rs. 5000 in November 2008.

13. The claimant projects that he obtained copy of the attendance register which are Ex.WW1/I to Ex.WW1/16 from his colleague Shri Sunil Kumar. Shri Sunil Kumar is placed on the same pedestal on which claimant is placed before this Tribunal. His industrial dispute has also been referred for adjudication by the appropriate Government with a term of reference which is identical to the terms of reference detailed above. Therefore, this claim that the aforesaid documents were received by the claimant from Shri Sunil Kumar projects hollowness of his testimony. It is presumed that the claimant fabricated aforesaid documents with a view to espouse his claim.

14. Testimony of the claimant could not lead this Tribunal to a conclusion in his favour. Evidence brought over the record by the claimant and Shri Ram Prakash, Telecom Technical Assistant, highlight that the claimant has not been able to project that he was ever engaged by the Nigam as a Lineman. Ocular facts unfolded by the claimant nowhere make out a case in his favour. Now testimony of Shri Hari Singh Meena is left to be appreciated. Tone and tenor of his testimony make it clear that Shri Meena deposed that the claimant was never engaged by the Nigam. During the course of his cross-examination names of various persons employed with the Nigam were put to Shri Meena. In a row he deposed that the claimant and his associates do work with the management. Names of the Officers and persons employed with the Nigam which were put to Shri Meena are Ram Prakash, Prem Lal, Khushiali, Bhanwar Kumar Singh, Mahinder Singh, Babu Ram and Amar Chand and in continuity names of Satish Kumar, Sunil Kumar, Chaman Lal and that of the claimant were also put asking Shri Meena whether they work with the Nigam. He answered that the above persons do work with the Nigam. However, fallacy of this affirmation came over the record when in subsequent breath Shri Meena denied the suggestion to the effect that the claimant worked with the Nigam from July, 1997 till December, 2008.

15. On what standards testimony of Shri Meena is to be appreciated? It is a matter of common knowledge that testimony of a witness remains laced with his experience and temperaments. He may have strong bias from what he considers to be the justice of the case. With entire sense of innocence he may recall things which had never occurred and forget important instances which had occurred, through operation of sympathy for the good man threatened with a loss. The courts are not oblivious of the proposition that testimony is not a mere mechanical repetition or transcription of past events and it often involves fallible inferences. A witness in testifying things seen or heard or felt is invariably making judgements of inferences what he

has seen, heard or felt. In making such inferences without having any improper motive, the witness may badly misrepresent the objective facts.

16. The courts have been alive to possibilities of grave error occurring in a testimony and have therefore, repeatedly declared that it is one of the most important functions of the Trial Judge, in determining the value and weight of the evidence, to consider demeanour of the witness. Tongue of the witness, it has been said, is not the only organ for conveying testimony, yet it is only the words that can be transmitted to the court record while the story that is told by the manner, by the tone, by the eyes must not be lost sight of. A Judge is a witness of what is occurring in his court room, hence witness of witnesses. He must determine what are the facts of the case from what he sees and hears. Thus, from the words, gestures and other conduct of the witnesses who are testifying before him, the Judge, has to determine facts. Determination of facts is not a mechanical act.

17. It is a settled proposition that a Trial Judge has to give meaning to the words deposed by the witnesses from tone and tenor in which they were uttered. This standard of appreciation of facts would be applied to the present controversy. When Shri Meena was under cross-examination, Shri Hub Lal Yadav, authorized representative of the claimant, had detailed a few names of the persons employed with the Nigam, which were recorded by him on a piece of paper. Those names were Ram Prakash, Puran Lal, Khushiali, Bhanwar Singh, Mahinder Singh, Babu Ram and Amar Chand. An impression was given to Shri Meena that Shri Yadav was reciting names of employees of the Nigam and in that bid Shri Yadav uttered names of Satish Kumar, Manoj Kumar, Sunil Kumar, Chaman Lal and questioned Shri Meena as to whether they worked with the Management. Shri Meena answered this proposition in affirmative. It is obvious that under confusion he gave this answer. This fact emerges when in subsequent breath Shri Meena denied the suggestion that the claimant worked with the Nigam from July, 1997 till December, 2008. The position of embarrassment, with which Shri Meena met, was noted by the Tribunal and it was observed that above statement was made under misconception. Demeanour of Shri Meena, noted by the Tribunal, made it clear that under confusion of various names detailed by Shri Yadav Shri Meena made above affirmative statement. His subsequent answer to the suggestion gives meaning to the words unfolded by him. Consequently it is concluded that the deposition of Shri Meena that Shri Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal do work with the management is not based on facts. It cannot be given any weight.

18. A facet of coin, which emerged on 24-5-2011, is also noted. An application was moved by Shri Deepak Thukral, authorised representative of the Nigam, for correction of testimony of Shri Meena, referred above,

claiming that it was so recorded on account of typographical error. Since the application was an afterthought, it was declined. It was not the stage where the Tribunal would have made it clear to the parties as to how it would appreciate facts. Consequently, it is made clear that the procedural order, passed on the application on 24-5-2011, was not a reflection of mind of the Tribunal as to how facts were to be appreciated in the controversy.

19. In view of the above discussion, it is emerging over the record that the documentary evidence projected by the claimant was forged and fabricated one. It could not lead the Tribunal to record facts in favour of the claimant. Self serving ocular testimony of the claimant was also found to be a pigment of imagination. It seems that the claimant worked with the Nigam as an employee of a contractor. When he was bidden farewell by his employer, under some misconception of law the claimant served demand notice Ex. WW1/17 on the Nigam. Except service of that demand notice, there is no other circumstance in favour of the claimant to espouse his cause. He miserably failed to project that a relationship of employer and employee was ever established between the parties. Consequently, I am constrained to conclude that there existed no relationship of employer and employee between the claimant and the Nigam. The issue is, therefore, answered against the claimant.

ISSUE NOS. 2 AND 3:

20. Since the claimant was not an employee of the Nigam, there was no occasion for the Nigam to terminate his services on 2-12-2008. In view of these propositions of fact, it is concluded that there is no case in favour of the claimant. He cannot seek any relief of reinstatement of service against the Nigam. His claim is liable to be discarded. Accordingly his claim is brushed aside. Award is passed in favour of the Nigam and against the claimant. It may be sent to the appropriate Government for publication.

Dated: 2-4-2012

Dr. R. K. YADAV, Presiding Officer

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO.1, KARKARDOOMA
COURTS COMPLEX, DELHI**

I. D. No. 47/2010

Shri Sunil Kumar S/o Shri Tek Chand,
C/o Shri Hoob Lal, 530,
Near Prem Public School,
Dayal Nagar, Post - Amar Nagar,
Faridabad.

... Workman

Versus

The General Manager,
BSNL, Telephone Exchange,
Sector 15-A,
Faridabad.

...Management

AWARD

On 18-2-2009 a demand notice was sent by Shri Sunil Kumar son of Shri Tek Chand to General Manager, Bharat Sanchar Nigam Ltd., (in short the Nigam) pleading therein that he was working with the Nigam as Lineman since January, 1996. His last drawn wages were Rs.5000 P.M. He claimed therein that his work was satisfactory and he never gave any chance of complaint to his superiors. His wages for the months of October and November 2008 and payment for over time work were not released in his favour. When he raised demand for payment of wages and over time allowance, his services were dispensed with on 2-12-2008. He claimed that the action of the Nigam was violative of the provisions of Industrial Disputes Act, 1947 (in short the Act). He called upon the Nigam to reinstate his services with continuity and full back wages. When no response to the said demand was received, Shri Sunil Kumar raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal, vide order No.L-40012/43/2010-IR(DU) New Delhi, dated 30th September, 2010, with following terms:—

“Whether the action of the management of Bharat Sanchar Nigam Limited, Faridabad, in terminating the services of their workman Shri Sunil Kumar son of Shri Tek Chand, Lineman with effect from 2-12-2008 is legal and justified? If not, what relief the workman is entitled to?”

2. Claim statement was filed by Shri Sunil Kumar pleading therein that he was employed with the Nigam since January, 1996. He was working as Lineman and drawing monthly wages of Rs.5000.00. His services were terminated by the Nigam on 2-12-2008, by a verbal order. He projects that refusal of duty amounts to termination of his services which fall within the ambit of retrenchment as defined by the Act. According to him, act of the Nigam amounts to unfair labour practice, since a new employee has been engaged in his place. He unfords that he is unemployed since the date of termination of his services. A demand notice was sent to the Nigam on 18-2-2009. He seeks an award in his favour for reinstatement of his services with continuity and full back wages.

3. Claim was demurred by the Nigam pleading that there existed no relationship of employer and employee between the parties. At no point of time, the claimant was engaged by the Nigam as Lineman. His claim that he was engaged since January, 1996 is false, projects the Nigam. Since claimant was never engaged, there was no question of termination of his service with effect from 2-12-2008. Provisions of the Act were not violated by the Nigam. It has been admitted that a demand notice dated 18-2-2009 was served, which was based on false facts. A claim has been made that case projected by the claimant may be discarded, being devoid of merits.

4. On pleadings of parties the following issues were settled :—

(i) Whether there existed no relationship of employer and employee between the parties?

(ii) In terms of reference

(iii) Relief.

5. To discharge onus resting on him, the claimant has examined himself and Shri Ram Prakash, Telecom Technical Assistant. Shri Hari Singh Meena entered the witness box on behalf of the Nigam to dispel facts projected on behalf of the claimant. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Hub Lal Yadav and Sumer Singh, authorized representatives, advanced arguments on behalf of the claimant. Shri Deepak Thukral, authorized representative, presented facts on behalf of the Nigam. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

ISSUE No.1

7. Affidavit Ex.WW-1/A was tendered as evidence by the claimant, swearing there in that he joined the Nigam in January 1996 as a Lineman. He worked continuously with the Nigam. He never gave chance of complaint to his superiors. He was initially engaged in Hodal Exchange. In case of exigencies, he was sent to Palwal Exchange also for job. He used to perform duties for 12 hours in a day. His wages for the months of October and November 2008 and over time allowance were not released. When he raised a demand, his services were terminated on 2-12-2008 orally. A new Lineman has been engaged in his place. Act of Nigam amounts to unfair labour practice and violative of the provisions of the Act. He worked for more than 240 days in every calendar year. Besides his affidavit he placed reliance on documents Ex.WW1/1 to Ex.WW-1/18. During the course of his cross examination, he concedes that no appointment letter was issued in his favour. According to him Ex.WW-1/1 to Ex.WW-1/16 were prepared by Shri Ram Parkash, Telecom Technical Assistant. He projects that he obtained photocopies of the attendance register from Shri Sunil Kumar, his colleague. Whenever wages were paid to him, his signatures were obtained on form AC-17.

8. Shri Ram Parkash, Telecom Technical Assistant, entered the witness box and unfolded that there were 17-18 Gramin Exchange under his control. As and when there was a fault in any of the Gramin Exchange, he was supposed to attend that fault. None worked under him. He declared that claimant is not known to him. Ex.WW1/1 to Ex.WW1/16 are neither in his hand nor bear his signatures. He asserts that in Ex.WW1/1 to Ex.WW1/16 names of Satish Kumar,

Manoj Kumar, Sunil Kumar, and Chaman Lal do appear. None of them have worked under Shri Om Parkash, V. K. Jain, M.S. Chauhan, V.K. Joshi, Subhash, M.L. Gaur, Rajpal Singh and Satinder Singh Srivastava, S.D.O.'s, Hodal Group area at different spell of time. He projects that he himself, Puran Lal, Khushiali, Bhawar Singh, Chander Singh, Babu Ram and Amar Chand had worked under the aforesaid Officers. He never saw Chaman Lal, Sunil Kumar, Manoj Kumar and Satish ever working with the Nigam.

9. Hari Singh Meena testified that the claimant was never employed by the Nigam at any point of time. He declares that in January 1996 he was posted at Hisar. He joined Faridabad in 2006 and had detailed facts on the basis of record. The claimant was not engaged as Lineman in January 1996. Since he was never employed by the Nigam, there was no question of his serving with sincerity, honesty and to the satisfaction of his superiors. Since the claimant was not employed with the Nigam, there was no occasion for the Nigam to terminate his services on 2-12-2008. He expressed ignorance as to whether claimant ever worked at Hodal Exchange, as an employee of a contractor. He announces that Ex.WW1/1 to Ex.WW1/16 do not pertain to the Nigam. During the course of his cross-examination, he presents that Ram Parkash, Puran Lal, Khushiali, Bhawar Singh, Madan Singh, Babu Ram, Amar Chand, Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal have worked with the Nigam. He explained that he had not brought their attendance record. According to him, Data Ram, Vinod, Bhawar Singh, Puran Lal, Gopal Sharma, Aherwan Vats, Devdatt Sharma, Manju, Kamla and Gyanvati are employed by the Nigam. He disputed that the claimant had worked with the Nigam since 1996 till December 2006.

10. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service can be entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

11. It would be ascertained whether the claimant has been able to establish that he was employed by the Nigam.

For that purpose facts unfolded by the claimant, Ram Parkash and Hari Singh Meena are to be appreciated. Claimant details that he was engaged by the management in January 1996 as a Lineman. According to him no letter of appointment was issued in his favour. With a view to project that he worked with the Nigam, he has relied upon documents Ex.WW-1/1 to Ex.WW-1/16 which are photocopies of alleged attendance register maintained by the Nigam. According to him Ex.WW1/1 to Ex.WW-1/16 bear his signatures and of Shri Ram Parkash, Telecom Technical Assistant. However facts unfolded by the claimant were dispelled by Ram Parkash when he entered the witness box. Shri Ram Parkash declares that Ex.WW1/1 to Ex.WW1/16-are neither in his hand nor bear his signatures. This fact makes it clear that genuineness of Ex.WW-1/1 to Ex.WW-1/16 came under clouds. Unambiguous testimony of Ram Parkash discarded the claim to the effect that the claimant marked his attendance on Ex.WW1/1 to Ex.WW1/16 which fact was verified by TTE serving the Nigam. Consequently it is emerging over the record that the documents relied by the claimant, nowhere espouse his cause. These documents cannot be read in favour of the claimant, since the officer, who was claimed to have verified the attendance record, had branded them to be forged and fabricated.

12. The claimant places reliance on ocular facts detailed by him in his affidavit Ex.WW1/A. As detailed therein, he testifies that he joined the Nigam in January 1996 as a Lineman and worked as such till 2-12-2008. For a long period of 12 years he served the Nigam, as projected by him in his affidavit. But neither an appointment letter nor any document is pressed in service by the claimant to substantiate ocular facts. Even otherwise his testimony comes in conflict with the facts, which are nearer to the truth. He wants this Tribunal to believe that in November 2008 his salary was Rs 5000 per month. In 5th Central Pay Commission a scale of Rs.2550-55-2660-60-3200 was recommended for Group 'D' employees. Assuming that the claimant joined service in January 1996, then he would have earned 12 increments in scale "S1" and his basic pay would have been fixed at Rs. 3200 as on January 2008. On this basic pay, dearness allowance, HRA and other allowances, if added would enhance net amount to more than Rs.7000. These aspects demolish his testimony to the effect that he was getting a sum of Rs. 5000 per month in November 2008. His testimony is found further from truth when it was considered from angle referred above. However a Lineman would get his pay in scale "S3" recommended by 5th Central Pay Commission and if calculated, pay of a Lineman would be higher than Rupees ten thousands a month in November 2008. Consequently it is evident that the claimant have projected false facts in that regard. Had he been working as an employee with the Nigam, he would have been drawing much more salary than a sum of Rs.5000 in November 2008.

13. Testimony of the claimant could not lead this Tribunal to a conclusion in his favour. Evidence brought over the record by the claimant and Shri Ram Parkash, Telecom Technical Assistant, highlight that the claimant has not been able to project that he was ever engaged by the Nigam as a Lineman. Ocular facts unfolded by the claimant nowhere make out a case in his favour. Now testimony of Shri Hari Singh Meena is left to be appreciated. Tone and tenor of his testimony make it clear that Shri Meena deposed that the claimant was never engaged by the Nigam. During the course of his cross-examination names of various persons employed with the Nigam were put to Shri Meena. In a row he deposed that the claimant and his associates do work with the management. Names of the Officers and persons employed with the Nigam which were put to Shri Meena are Ram Prakash, Prem Lal, Khushiali, Bhanwar Kumar Singh, Mahinder Singh, Babu Ram and Amar Chand and in continuity names of Satish Kumar, Sunil Kumar, Chaman Lal and that of the claimant were also put asking Shri Meena whether they work with the Nigam. He answered that the above persons do work with the Nigam. However, fallacy of this affirmation came over the record when in subsequent breath Shri Meena denied the suggestion to the effect that the claimant worked with the Nigam from January, 1996 till December, 2008.

14. On what standards testimony of Shri Meena is to be appreciated? It is a matter of common knowledge that testimony of a witness remains laced with his experience and temperaments. He may have strong bias from what he considers to be the justice of the case. With entire sense of innocence he may recall things which had never occurred and forget important instances which had occurred, through operation of sympathy for the good man threatened with a loss. The courts are not oblivious of the proposition that testimony is not a mere mechanical repetition or transcription of past events and it often involves fallible inferences. A witness in testifying things seen or heard, felt is invariably making judgements of inferences what he has seen, heard or felt. In making such inferences without having any improper motive, the witness may badly misrepresent the objective facts.

15. The courts have been alive to possibilities of grave error occurring in a testimony and have therefore, repeatedly declared that it is one of the most important functions of the Trial Judge, in determining the value and weight of the evidence, to consider demeanour of the witness. Tongue of the witness, it has been said, is not the only organ for conveying testimony, yet it is only the words that can be transmitted to the court record while the story that is told by the manner, by the tone, by the eyes must not be lost sight of. A Judge is a witness of what is occurring in his court room, hence witness of witnesses. He must determine what are the facts of the case from what he sees and hears. Thus, from the words, gestures and other conduct of the witnesses who are testifying before

him, the Judge, has to determine facts. Determination of facts is not a mechanical act.

16. It is a settled preposition that a Trial Judge has to give meaning to the words deposed by the witnesses from tone and tenor in which they were uttered. This standard of appreciation of facts would be applied to the present controversy. When Shri Meena was under cross-examination, Shri Hub Lal Yadav, authorized representative of the claimant, had detailed a few names of the persons employed with the Nigam, which were recorded by him on a piece of paper. Those names were Ram Prakash, Puran Lal, Khushiali, Bhanwar Singh, Mahinder Singh, Babu Ram and Amar Chand. An impression was given to Shri Meena that Shri Yadav was reciting names of employees of the Nigam and in that bid Shri Yadav uttered names of Satish Kumar, Manoj Kumar, Sunil Kumar, Chaman Lal and questioned Shri Meena as to whether they worked with the Management. Shri Meena answered this proposition in affirmative. It is obvious that under confusion he gave this answer. This fact emerges when in subsequent breath Shri Meena denied the suggestion that the claimant worked with the Nigam from January, 1996 till December, 2008. The position of embarrassment, with which Shri Meena met, was noted by the Tribunal and it was observed that above statement was made under mis-conception. Demeanour of Shri Meena, noted by the Tribunal, made it clear that under confusion of various names detailed by Shri Yadav Shri Meena made above affirmative statement. His subsequent answer to the suggestion gives meaning to the words unfolded by him. Consequently it is concluded that the deposition of Shri Meena that Shri Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal do work with the management is not based on facts. It cannot be given any weight.

17. A facet of coin, which emerged on 24-5-2011, is also noted. An application was moved by Shri Deepak Thukral, authorised representative of the Nigam, for correction of testimony of Shri Meena, referred above, claiming that it was so recorded on account of typographical error. Since the application was an afterthought, it was declined. It was not the stage where the Tribunal would have made it clear to the parties as to how it would appreciate facts. Consequently, it is made clear that the procedural order, passed on the application on 24.5.2011, was not a reflection of mind of the Tribunal as to how facts were to be appreciated in the controversy.

18. In view of the above discussion, it is emerging over the record that the documentary evidence projected by the claimant was forged and fabricated one. It could not lead the Tribunal to record facts in favour of the claimant. Self serving ocular testimony of the claimant was also found to be a pigment of imagination. It seems that the claimant worked with the Nigam as an employee of a contractor. When he was bidden farewell by his employer, under some misconception of law the claimant served demand notice

Ex.WW1/17 on the Nigam. Except service of that demand notice, there is no other circumstance in favour of the claimant to espouse his cause. He miserably failed to project that a relationship of employer and employee was ever established between the parties. Consequently, I am constrained to conclude that there existed no relationship of employer and employee between the claimant and the Nigam. The issue is, therefore, answered against the claimant.

ISSUE Nos. 2 AND 3:

19. Since the claimant was not an employee of the Nigam, there was no occasion for the Nigam to terminate his services on 2-12-2008. In view of these propositions of fact, it is concluded that there is no case in favour of the claimant. He cannot seek any relief of reinstatement of service against the Nigam. His claim is liable to be discarded. Accordingly his claim is brushed aside. Award is passed in favour of the Nigam and against the claimant. It may be sent to the appropriate Government for publication.

Dated : 2-4-2012

Dr. R. K. YADAV, Presiding Officer

BEFORE DR. R.K.YADAV, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIA TRIBUNAL NO.1, KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 48/2010

Shri Manoj Kumar S/o Shri Parbhu Dayal,
C/o Shri Hoob Lal, 530,
Near Prem Public School,
Dayal Nagar, Post - Amar Nagar,
Faridabad.

... Workman

Versus

The General Manager,
BSNL, Telephone Exchange,
Sector 15-A,
Faridabad.

...Management

AWARD

On 18-2-2009 a demand notice was sent by Shri Manoj Kumar son of Shri Prabhu Dayal to General Manager, Bharat Sanchar Nigam Ltd., (in short the Nigam) pleading therein that he was working with the Nigam as Lineman since January, 1996. His last drawn wages were Rs.5000/- P.M. He claimed therein that his work was satisfactory and he never gave any chance of complaint to his superiors. His wages for the months of October and November 2008 and payment for over time work were not released in his favour. When he raised demand for payment of wages and over time allowance, his services were dispensed with on 2-12-2008. He claimed that the action of the Nigam was violative of the provisions of Industrial Disputes Act, 1947 (in short the Act). He called upon the Nigam to reinstate his services with continuity and full back wages. When no

response to the said demand was received, Shri Manoj Kumar raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal, vide order No.L-40012/44/2010-IR(DU) New Delhi, dated 30th September, 2010, with following terms:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, Faridabad, in terminating the services of their workman Shri Manoj Kumar son of Shri Prabhu Dayal, Lineman with effect from 2-12-2008 is legal and justified? If not, what relief the workman is entitled to?"

2. Claim statement was filed by Shri Manoj Kumar pleading therein that he was employed with the Nigam since January, 1996. He was working as Lineman and drawing monthly wages of Rs.5000. His services were terminated by the Nigam on 2-12-2008, by a verbal order. He projects that refusal of duty amounts to termination of his services which fall within the ambit of retrenchment as defined by the Act. According to him, act of the Nigam amounts to unfair labour practice, since a new employee has been engaged in his place. He unfolds that he is unemployed since the date of termination of his services. A demand notice was sent to the Nigam on 18-2-2009. He seeks an award in his favour for reinstatement of his services with continuity and full back wages.

3. Claim was demurred by the Nigam pleading that there existed no relationship of employer and employee between the parties. At no point of time, the claimant was engaged by the Nigam as Lineman. His claim that he was engaged since January, 1996 is false, projects the Nigam. Since claimant was never engaged, there was no question of termination of his service with effect from 2-12-2008. Provisions of the Act were not violated by the Nigam. It has been admitted that a demand notice dated 18-2-2009 was served, which was based on false facts. A claim has been made that case projected by the claimant may be discarded, being devoid of merits.

4. On pleadings of parties the following issues were settled :—

(i) Whether there existed no relationship of employer and employee between the parties?

(ii) In terms of reference

(iii) Relief.

5. To discharge onus resting on him, the claimant has examined himself and Shri Ram Prakash, Telecom Technical Assistant. Shri Hari Singh Meena entered the witness box on behalf of the Nigam to dispel facts projected on behalf of the claimant. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Hub Lal Yadav and Sumer Singh, authorized representatives, advanced arguments on behalf of the claimant. Shri Deepak

Thukral, authorized representative, presented facts on behalf of the Nigam. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:

ISSUE No. 1

7. Affidavit Ex.WW-1/A was tendered as evidence by the claimant, swearing there in that he joined the Nigam in January, 1996 as a Lineman. He worked continuously with the Nigam. He never gave chance of complaint to his superiors. He was initially engaged in Hodal Exchange. In case of exigencies, he was sent to Palwal Exchange also for job. He used to perform duties for 12 hours in a day. His wages for the months of October and November 2008 and over time allowance were not released. When he raised a demand, his services were terminated on 2-12-2008 orally. A new Lineman has been engaged in his place. Act of Nigam amounts to unfair labour practice and violative of the provisions of the Act. He worked for more than 240 days in every calendar year. Besides his affidavit he placed reliance on documents Ex.WW1/1 to Ex.WW-1/18. During the course of his cross-examination, he concedes that no appointment letter was issued in his favour. According to him Ex.WW-1/1 to Ex.WW-1/16 were prepared by Shri Ram Parkash, Telecom Technical Assistant. He projects that he obtained photocopies of the attendance register from Shri Sunil Kumar, his colleague. Whenever wages were paid to him, his signatures were obtained on form AC-17.

8. Shri Ram Parkash, Telecom Technical Assistant, entered the witness box and unfolded that there were 17-18 Gramin Exchange under his control. As and when there was a fault in any of the Gramin Exchange, he was supposed to attend that fault. None worked under him. He declared that claimant is not known to him. Ex.WW1/1 to Ex.WW1/16 are neither in his hand nor bear his signatures. He asserts that in Ex.WW1/1 to Ex.WW1/16 names of Satish Kumar, Manoj Kumar, Sunil Kaumr, and Chaman Lal do appear. None of them have worked under Shri Om Parkash, V. K. Jain, M.S. Chauhan, V.K. Joshi, Subhash, M.L. Gaur, Rajpal Singh and Satinder Singh Srivastava, S.D.O.'s, Hodal Group area at different spell of time. He projects that he himself, Puran Lal Khushiali, Bhawar Singh, Chander Singh, Babu Ram and Amar Chand had worked under the aforesaid Officers. He never saw Chaman Lal, Sunil Kumar, Manoj Kumar and Satish ever working with the Nigam.

9. Hari Singh Meena testified that the claimant was never employed by the Nigam at any point of time. He declares that in January 1996 he was posted at Hisar. He joined Faridabad in 2006 and had detailed facts on the basis of record. The claimant was not engaged as Lineman in January 1996. Since he was never employed by the Nigam, there was no question of his serving with Sincerity, honesty and to the satisfaction of his superiors. Since the claimant

was not employed with the Nigam, there was no occasion for the Nigam to terminate his services on 2-12-2008. He expressed ignorance as to whether claimant ever worked at Hodal Exchange, as an employee of a contractor. He announces that Ex.WW1/1 to Ex.WW1/16 do not pertain to the Nigam. During the course of his cross-examination, he presents that Ram Parkash, Pural Lal Khushiali, Bhawar Singh, Madan Singh, Babu Ram, Amar Chand, Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal have worked with the Nigam. He explained that he had not brought their attendance record. According to him, Data Ram, Vinod, Bhawar Singh, Pural Lal, Gopal Sharma, Aherwan Vats, Devdatt Sharma, Manju, Kamla and Gyanvati are employed by the Nigam. He disputed that the claimant had worked with the Nigam since 1996 till December 2006.

10. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service can be entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

11. It would be ascertained whether the claimant has been able to establish that he was employed by the Nigam. For that purpose facts unfolded by the claimant, Ram Parkash and Hari Singh Meena are to be appreciated. Claimant details that he was engaged by the management in January 1996 as a Lineman. According to him no letter of appointment was issued in his favour. With a view to project that he worked with the Nigam, he has relied upon documents Ex.WW-1/1 to Ex.WW-1/16 which are photocopies of alleged attendance register maintained by the Nigam. According to him Ex.WW1/1 to Ex.WW-1/16 bear his signatures and of Shri Ram Parkash, Telecom Technical Assistant. However facts unfolded by the claimant were dispelled by Ram Parkash when he entered the witness box. Shri Ram Parkash declares that Ex.WW1/1 to Ex.WW1/16 are neither in his hand nor bear his signatures. This fact makes it clear that genuineness of Ex.WW-1/1 to Ex.WW-1/16 came under clouds. Unambiguous testimony of Ram Parkash discarded the

claim to the effect that the claimant marked his attendance on Ex.WW1/1 to Ex.WW1/16 which fact was verified by TTE serving the Nigam. Consequently it is emerging over the record that the documents relied by the claimant, nowhere espouse his cause. These documents cannot be read in favour of the claimant, since the officer, who was claimed to have verified the attendance record, had branded them to be forged and fabricated.

12. The claimant places reliance on ocular facts detailed by him in his affidavit EX.WW1/A. As detailed therein, he testifies that he joined the Nigam in January 1996 as a Lineman and worked as such till 2-12-2008. For a long period of 13 years he served the Nigam, as projected by him in his affidavit. But neither an appointment letter nor any document is pressed in service by the claimant to substantiate ocular facts. Even otherwise his testimony comes in conflict with the facts, which are nearer to the truth. He wants this Tribunal to believe that in November 2008 his salary was Rs 5000 per month. In 5th Central Pay Commission a scale of Rs. 2550-55-2660-60-3200 was recommended for Group 'D' employees. Assuming that the claimant joined service in January 1996, then he would have earned 12 increments in scale "S1" and his basic pay would have been fixed at Rs.3200 as on January 2008. On this basic pay, dearness allowance, HRA and other allowances, if added would enhance net amount to more than Rs.7000. These aspects demolish his testimony to the effect that he was getting a sum of Rs.5000/- per month in November 2008. His testimony is found farther from truth when it was considered from angle referred above. However a Lineman would get his pay in scale "S3" recommended by 5th Central Pay Commission and if calculated, pay of a Lineman would be higher than Rupees ten thousands a month in November 2008. Consequently it is evident that the claimant have projected false facts in that regard. Had he been working as an employee with the Nigam, he would have been drawing much more salary than a sum of Rs.5000 in November 2008.

13. The claimant projects that he obtained copy of the attendance register which are Ex.WW1/1 to Ex.WW1/16 from his colleague Shri Sunil Kumar. Shri Sunil Kumar is placed on the same pedestal on which claimant is placed before this Tribunal. His industrial dispute has also been referred for adjudication by the appropriate Government with a term of reference which is identical to the terms of reference detailed above. Therefore, this claim that the aforesaid documents were received by the claimant from Shri Sunil Kumar projects hollowness of his testimony. It is presumed that the claimant fabricated aforesaid documents with a view to espouse his claim.

14. Testimony of the claimant could not lead this Tribunal to a conclusion in his favour. Evidence brought over the record by the claimant and Shri Ram Parkash, Telecom Technical Assistant, highlight that the claimant

has not been able to project that he was ever engaged by the Nigam as a Lineman. Ocular facts unfolded by the claimant nowhere make out a case in his favour. Now testimony of Shri Hari Singh Meena is left to be appreciated. Tone and tenor of his testimony make it clear that Shri Meena deposed that the claimant was never engaged by the Nigam. During the course of his cross-examination names of various persons employed with the Nigam were put to Shri Meena. In a row he deposed that the claimant and his associates do work with the management. Names of the Officers and persons employed with the Nigam which were put to Shri Meena are Ram Prakash, Prem Lal, Khushiali, Bhanwar Kumar Singh, Mahinder Singh, Babu Ram and Amar Chand and in continuity names of Satish Kumar, Sunil Kumar, Chaman Lal and that of the claimant were also put asking Shri Meena whether they work with the Nigam. He answered that the above persons do work with the Nigam. However, fallacy of this affirmation came over the record when in subsequent breath Shri Meena denied the suggestion to the effect that the claimant worked with the Nigam from January, 1996 till December, 2008.

15. On what standards testimony of Shri Meena is to be appreciated? It is a matter of common knowledge that testimony of a witness remains laced with his experience and temperaments. He may have strong bias from what he considers to be the justice of the case. With entire sense of innocence he may recall things which had never occurred and forget important instances which had occurred, through operation of sympathy for the good man threatened with a loss. The courts are not oblivious of the proposition that testimony is not a mere mechanical repetition or transcription of past events and it often involves fallible inferences. A witness in testifying things seen or heard or felt is invariably making judgements of inferences what he has seen, heard or felt. In making such inferences without having any improper motive, the witness may badly misrepresent the objective facts.

16. The courts have been alive to possibilities of grave error occurring in a testimony and have therefore, repeatedly declared that it is one of the most important functions of the Trial Judge, in determining the value and weight of the evidence, to consider demeanour of the witness. Tongue of the witness, it has been said, is not the only organ for conveying testimony, yet it is only the words that can be transmitted to the court record while the story that is told by the manner, by the tone, by the eyes must not be lost sight of. A Judge is a witness of what is occurring in his court room, hence witness of witnesses. He must determine what are the facts of the case from what he sees and hears. Thus, from the words, gestures and other conduct of the witnesses who are testifying before him, the Judge, has to determine facts. Determination of facts is not a mechanical act.

17. It is a settled proposition that a Trial Judge has to give meaning to the words deposed by the witnesses from

tone and tenor in which they were uttered. This standard of appreciation of facts would be applied to the present controversy. When Shri Meena was under cross-examination, Shri Hub Lal Yadav, authorized representative of the claimant, had detailed a few names of the persons employed with the Nigam, which were recorded by him on a piece of paper. Those names were Ram Prakash, Puran Lal, Khushiali, Bhanwar Singh, Mahinder Singh, Babu Ram and Amar Chand. An impression was given to Shri Meena that Shri Yadav was reciting names of employees of the Nigam and in that bid Shri Yadav uttered names of Satish Kumar, Manoj Kumar, Sunil Kumar, Chaman Lal and questioned Shri Meena as to whether they worked with the Management. Shri Meena answered this proposition in affirmative. It is obvious that under confusion he gave this answer. This fact emerges when in subsequent breath Shri Meena denied the suggestion that the claimant worked with the Nigam from January, 1996 till December, 2008. The position of embarrassment, with which Shri Meena met, was noted by the Tribunal and it was observed that above statement was made under mis-conception. Demeanour of Shri Meena, noted by the Tribunal, made it clear that under confusion of various names detailed by Shri Yadav Shri Meena made above affirmative statement. His subsequent answer to the suggestion gives meaning to the words unfolded by him. Consequently it is concluded that the deposition of Shri Meena that Shri Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal do work with the management is not based on facts. It cannot be given any weight.

18. A facet of coin, which emerged on 24-5-2011, is also noted. An application was moved by Shri Deepak Thukral, authorised representative of the Nigam, for correction of testimony of Shri Meena, referred above, claiming that it was so recorded on account of typographical error. Since the application was an afterthought, it was declined. It was not the stage where the Tribunal would have made it clear to the parties as to how it would appreciate facts. Consequently, it is made clear that the procedural order, passed on the application on 24-5-2011, was not a reflection of mind of the Tribunal as to how facts were to be appreciated in the controversy.

19. In view of the above discussion, it is emerging over the record that the documentary evidence projected by the claimant was forged and fabricated one. It could not lead the Tribunal to record facts in favour of the claimant. Self serving ocular testimony of the claimant was also found to be a pigment of imagination. It seems that the claimant worked with the Nigam as an employee of a contractor. When he was bidden farewell by his employer, under some misconception of law the claimant served demand notice Ex. WW1/17 on the Nigam. Except service of that demand notice, there is no other circumstance in favour of the claimant to espouse his cause. He miserably failed to project that a relationship of employer and employee was ever

established between the parties. Consequently, I am constrained to conclude that there existed no relationship of employer and employee between the claimant and the Nigam. The issue is, therefore, answered against the claimant.

ISSUE NOS. 2 AND 3:

20. Since the claimant was not an employee of the Nigam, there was no occasion for the Nigam to terminate his services on 2-12-2008. In view of these propositions of fact, it is concluded that there is no case in favour of the claimant. He cannot seek any relief of reinstatement of service against the Nigam. His claim is liable to be discarded. Accordingly his claim is brushed aside. Award is passed in favour of the Nigam and against the claimant. It may be sent to the appropriate Government for publication.

Dated : 2-4-2012 Dr. R. K. YADAV, Presiding Officer

**BEFORE DR. R.K.YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO.1, KARKARDOOMA
COURTS COMPLEX, DELHI**

I. D. No. 49/2010

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...Management

AWARD

On 18-2-2009 a demand notice was sent by Shri Satish Kumar Son of Shri Rajender Singh to General Manager, Bharat Sanchar Nigam Ltd., (in short the Nigam) pleading therein that he was working with the Nigam as Lineman since January, 1996. His last drawn wages were Rs.5000 P.M. He claimed therein that his work was satisfactory and he never gave any chance of complaint to his superiors. His wages for the months of February, 2009 and payment for over time work were not released in his favour. When he raised demand for payment of wages and over time allowance, his services were dispensed with on 17-2-2009. He claimed that the action of the Nigam was violative of the provisions of Industrial Disputes Act, 1947 (in short the Act). He called upon the Nigam to reinstate his services with continuity and full back wages. When no response to the said demand was received, Shri Satish Kumar raised an industrial dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government

referred the dispute to this Tribunal, vide order No.L-40012/45/2010-IR(DU) New Delhi, dated 30th September, 2010, with following terms:—

"Whether the action of the management of Bharat Sanchar Nigam Limited, Faridabad, in terminating the services of their workman Shri Satish Kumar son of Shri Rajinder Singh, Lineman with effect from 2-12-2008 is legal and justified? If not, what relief the workman is entitled to?"

2. Claim statement was filed by Shri Satish Kumar pleading therein that he was employed with the Nigam since January, 1996. He was working as Lineman and drawing monthly wages of Rs.5000. His services were terminated by the Nigam on 17-2-2009, by a verbal order. He projects that refusal of duty amounts to termination of his services which fall within the ambit of retrenchment as defined by the Act. According to him, act of the Nigam amounts to unfair labour practice, since a new employee has been engaged in his place. He unfolds that he is unemployed since the date of termination of his services. A demand notice was sent to the Nigam on 18-2-2009. He seeks an award in his favour for reinstatement of his services with continuity and full back wages.

3. Claim was demurred by the Nigam pleading that there existed no relationship of employer and employee between the parties. At no point of time, the claimant was engaged by the Nigam as Lineman. His claim that he was engaged since January, 1996 is false, projects the Nigam. Since claimant was never engaged, there was no question of termination of his service with effect from 17-2-2009. Provisions of the Act were not violated by the Nigam. It has been admitted that a demand notice dated 18-2-2009 was served, which was based on false facts. A claim has been made that case projected by the claimant may be discarded, being devoid of merits.

4. On pleadings of parties the following issues were settled :—

- i) Whether there existed no relationship of employer and employee between the parties?
- ii) In terms of reference
- iii) Relief.

5. To discharge onus resting on him, the claimant has examined himself and Shri Ram Prakash, Telecom Technical Assistant. Shri Hari Singh Meena entered the witness box on behalf of the Nigam to dispel facts projected on behalf of the claimant. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Hub Lal Yadav and Sumer Singh, authorized representatives, advanced arguments on behalf of the claimant. Shri Deepak Thukral, authorized representative, presented facts on

behalf of the Nigam. I have given my careful considerations to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

ISSUE No.1

7. Affidavit Ex.WW-1/A was tendered as evidence by the claimant, swearing there in that he joined the Nigam in January, 1996 as a Lineman. He worked continuously with the Nigam. He never gave chance of complaint to his superiors. He was initially engaged in Hodal Exchange. In case of exigencies, he was sent to Palwal Exchange also for job. He used to perform duties for 12 hours in a day. His wages for the month of February, 2009 and over time allowance were not released. When he raised a demand, his services were terminated on 17-2-2009 orally. A new Lineman has been engaged in his place. Act of Nigam amounts to unfair labour practice and violative of the provisions of the Act. He worked for more than 240 days in every calendar year. Besides his affidavit he placed reliance on documents Ex.WW1/1 to Ex.WW-1/18. During the course of his cross examination, he concedes that no appointment letter was issued in his favour. According to him Ex.WW-1/1 to Ex.WW-1/16 were prepared by Shri Ram Parkash, Telecom Technical Assistant. He projects that he obtained photocopies of the attendance register from Shri Satish Kumar, his colleague. Whenever wages were paid to him, his signatures were obtained on form AC-17.

8. Shri Ram Parkash, Telecom Technical Assistant, entered the witness box and unfolded that there were 17-18 Gramin Exchange under his control. As and when there was a fault in any of the Gramin Exchange, he was supposed to attend that fault. None worked under him. He declared that claimant is not known to him. Ex.WW1/1 to Ex.WW 1/16 are neither in his hand nor bear his signatures. He asserts that in Ex.WW1/1 to Ex.WW1/16 names of Satish Kumar, Manoj Kumar, Sunil Kumar, and Chaman Lal do appear. None of them have worked under Shri Om Parkash, V. K. Jain, M.S. Chauhan, V.K. Joshi, Subhash, M.L. Gaur, Rajpal Singh and Satinder Singh Srivastava, S.D.O.'s, Hodal Group area at different spell of time. He projects that he himself, Puran Lal, Khushiali, Bhawar Singh, Chander Singh, Babu Ram and Amar Chand had worked under the aforesaid Officers. He never saw Chaman Lal, Sunil Kumar, Manoj Kumar and Satish ever working with the Nigam.

9. Hari Singh Meena testified that the claimant was never employed by the Nigam at any point of time. He declares that in January, 1996 he was posted at Hisar. He joined Faridabad in 2006 and had detailed facts on the basis of record. The claimant was not engaged as Lineman in January, 1996. Since he was never employed by the Nigam, there was no question of his serving with Sincerity, honesty and to the satisfaction of his superiors. Since the claimant was not employed with the Nigam, there was no occasion for the Nigam to terminate his services on 17-2-2009. He expressed ignorance as to whether claimant

ever worked at Hodal Exchange, as an employee of a contractor. He announces that Ex.WW1/1 to Ex.WW1/16 do not pertain to the Nigam. During the course of his cross-examination, he presents that Ram Parkash, Pural Lal, Khushiali, Bhawar Singh, Madan Singh, Babu Ram, Amar Chand, Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal have worked with the Nigam. He explained that he had not brought their attendance record. According to him, Data Ram, Vinod, Bhawar Singh, Pural Lal, Gopal Sharma, Aherwan Vats, Devdatt Sharma, Manju, Kamla and Gyanvati are employed by the Nigam. He disputed that the claimant had worked with the Nigam since January, 1996 till February, 2009.

10. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service can be entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

11. It would be ascertained whether the claimant has been able to establish that he was employed by the Nigam. For that purpose facts unfolded by the claimant, Ram Parkash and Hari Singh Meena are to be appreciated. Claimant details that he was engaged by the management in January, 1996 as a Lineman. According to him no letter of appointment was issued in his favour. With a view to project that he worked with the Nigam, he has relied upon documents Ex.WW-1/1 to Ex.WW-1/16 which are photocopies of alleged attendance register maintained by the Nigam. According to him Ex.WW1/1 to Ex.WW-1/16 bear his signatures and of Shri Ram Parkash, Telecom Technical Assistant. However facts unfolded by the claimant were dispelled by Ram Parkash when he entered the witness box. Shri Ram Parkash declares that Ex.WW1/1 to Ex.WW1/16 are neither in his hand nor bear his signatures. This fact makes it clear that genuineness of Ex.WW-1/1 to Ex.WW-1/16 came under clouds. Unambiguous testimony of Ram Parkash discarded the claim to the effect that the claimant marked his attendance on Ex.WW1/1 to Ex.WW1/16 which fact was verified by TTE serving the Nigam. Consequently it is emerging over

the record that the documents relied by the claimant, nowhere espouse his cause. These documents cannot be read in favour of the claimant, since the officer, who was claimed to have verified the attendance record, had branded them to be forged and fabricated.

12. The claimant places reliance on ocular facts detailed by him in his affidavit Ex.WW1/A. As detailed therein, he testifies that he joined the Nigam in January 1996 as a Lineman and worked as such till 17-2-2009. For a long period of 14 years he served the Nigam, as projected by him in his affidavit. But neither an appointment letter nor any document is pressed in service by the claimant to substantiate ocular facts. Even otherwise his testimony comes in conflict with the facts, which are nearer to the truth. He wants this Tribunal to believe that in November 2008 his salary was Rs. 5000 per month. In 5th Central Pay Commission a scale of Rs. 2550-55-2660-60-3200 was recommended for Group 'D' employees. Assuming that the claimant joined service in January 1996, then he would have earned 12 increments in scale "S1" and his basic pay would have been fixed at Rs.3200 as on January 2008. On this basic pay, dearness allowance, HRA and other allowances, if added would enhance net amount to more than Rs.7000. These aspects demolish his testimony to the effect that he was getting a sum of Rs.5000 per month in November 2008. His testimony is found farther from truth when it was considered from angle referred above. However a Lineman would get his pay in scale "S3" recommended by 5th Central Pay Commission and if calculated, pay of a Lineman would be higher than Rupees ten thousands a month in November 2008. Consequently it is evident that the claimant have projected false facts in that regard. Had he been working as an employee with the Nigam, he would have been drawing much more salary than a sum of Rs.5000 in November 2008.

13. The claimant projects that he obtained copy of the attendance register which are Ex.WW1/I to Ex.WW1/16 from his colleague Shri Sunil Kumar. Shri Sunil Kumar is placed on the same pedestal on which claimant is placed before this Tribunal. His industrial dispute has also been referred for adjudication by the appropriate Government with a term of reference which is identical to the terms of reference detailed above. Therefore, this claim that the aforesaid documents were received by the claimant from Shri Sunil Kumar projects hollowness of his testimony. It is presumed that the claimant fabricated aforesaid documents with a view to espouse his claim.

14. Testimony of the claimant could not lead this Tribunal to a conclusion in his favour. Evidence brought over the record by the claimant and Shri Ram Prakash, Telecom Technical Assistant, highlight that the claimant has not been able to project that he was ever engaged by the Nigam as a Lineman. Ocular facts unfolded by the

claimant nowhere make out a case in his favour. Now testimony of Shri Hari Singh Meena is left to be appreciated. Tone and tenor of his testimony make it clear that Shri Meena deposed that the claimant was never engaged by the Nigam. During the course of his cross-examination names of various persons employed with the Nigam were put to Shri Meena. In a row he deposed that the claimant and his associates do work with the management. Names of the Officers and persons employed with the Nigam which were put to Shri Meena are Ram Prakash, Prem Lal, Khushiali, Bhanwar Kumar Singh, Mahinder Singh, Babu Ram and Amar Chand and in continuity names of Satish Kumar, Sunil Kumar, Chaman Lal and that of the claimant were also put asking Shri Meena whether they work with the Nigam. He answered that the above persons do work with the Nigam. However, fallacy of this affirmation came over the record when in subsequent breath Shri Meena denied the suggestion to the effect that the claimant worked with the Nigam from January, 1996 till February, 2009.

15. On what standards testimony of Shri Meena is to be appreciated? It is a matter of common knowledge that testimony of a witness remains laced with his experience and temperaments. He may have strong bias from what he considers to be the justice of the case. With entire sense of innocence he may recall things which had never occurred and forget important instances which had occurred, through operation of sympathy for the good man threatened with a loss. The courts are not oblivious of the proposition that testimony is not a mere mechanical repetition or transcription of past events and it often involves fallible inferences. A witness in testifying things seen or heard or felt is invariably making judgements of inferences what he has seen, heard or felt. In making such inferences without having any improper motive, the witness may badly misrepresent the objective facts.

16. The courts have been alive to possibilities of grave error occurring in a testimony and have therefore, repeatedly declared that it is one of the most important functions of the Trial Judge, in determining the value and weight of the evidence, to consider demeanour of the witness. Tongue of the witness, it has been said, is not the only organ for conveying testimony, yet it is only the words that can be transmitted to the court record while the story that is told by the manner, by the tone, by the eyes must not be lost sight of. A Judge is a witness of what is occurring in his court room, hence witness of witnesses. He must determine what are the facts of the case from what he sees and hears. Thus, from the words, gestures and other conduct of the witnesses who are testifying before him, the Judge, has to determine facts. Determination of facts is not a mechanical act.

17. It is a settled proposition that a Trial Judge has to give meaning to the words deposed by the witnesses from tone and tenor in which they were uttered. This standard of appreciation of facts would be applied to the

present controversy. When Shri Meena was under cross-examination, Shri Hub Lal Yadav, authorized representative of the claimant, had detailed a few names of the persons employed with the Nigam, which were recorded by him on a piece of paper. Those names were Ram Prakash, Puran Lal, Khushiali, Bhanwar Singh, Mahinder Singh, Babu Ram and Amar Chand. An impression was given to Shri Meena that Shri Yadav was reciting names of employees of the Nigam and in that bid Shri Yadav uttered names of Satish Kumar, Manoj Kumar, Sunil Kumar, Chaman Lal and questioned Shri Meena as to whether they worked with the Management. Shri Meena answered this proposition in affirmative. It is obvious that under confusion he gave this answer. This fact emerges when in subsequent breath Shri Meena denied the suggestion that the claimant worked with the Nigam from January, 1996 till February, 2009. The position of embarrassment, with which Shri Meena met, was noted by the Tribunal and it was observed that above statement was made under mis-conception. Demeanour of Shri Meena, noted by the Tribunal, made it clear that under confusion of various names detailed by Shri Yadav Shri Meena made above affirmative statement. His subsequent answer to the suggestion gives meaning to the words unfolded by him. Consequently it is concluded that the deposition of Shri Meena that Shri Satish Kumar, Manoj Kumar, Sunil Kumar and Chaman Lal do work with the management is not based on facts. It cannot be given any weight.

18. A facet of coin, which emerged on 24-5-2011, is also noted. An application was moved by Shri Deepak Thukral, authorised representative of the Nigam, for correction of testimony of Shri Meena, referred above, claiming that it was so recorded on account of typographical error. Since the application was an afterthought, it was declined. It was not the stage where the Tribunal would have made it clear to the parties as to how it would appreciate facts. Consequently, it is made clear that the procedural order, passed on the application on 24-5-2011, was not a reflection of mind of the Tribunal as to how facts were to be appreciated in the controversy.

19. In view of the above discussion, it is emerging over the record that the documentary evidence projected by the claimant was forged and fabricated one. It could not lead the Tribunal to record facts in favour of the claimant. Self serving ocular testimony of the claimant was also found to be a pigment of imagination. It seems that the claimant worked with the Nigam as an employee of a contractor. When he was bidden farewell by his employer, under some misconception of law the claimant served demand notice Ex. WW1/17 on the Nigam. Except service of that demand notice, there is no other circumstance in favour of the claimant to espouse his cause. He miserably failed to project that a relationship of employer and employee was ever established between the parties. Consequently, I am constrained to conclude that there existed no relationship

of employer and employee between the claimant and the Nigam. The issue is, therefore, answered against the claimant.

ISSUE NOs. 2 AND 3:

20. Since the claimant was not an employee of the Nigam, there was no occasion for the Nigam to terminate his services on 17-2-2009. In view of these propositions of facts, it is concluded that there is no case in favour of the claimant. He cannot seek any relief of reinstatement of service against the Nigam. His claim is liable to be discarded. Accordingly, his claim is brushed aside. Award is passed in favour of the Nigam and against the claimant. It may be sent to the appropriate Government for publication.

Dated : 2-4-2012 Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 13 जून, 2012

का.आ. 2320.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम डिस्ट्रिक्ट इंजीनियर, रायसेन (एम.पी.) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/132/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-2012 को प्राप्त हुआ था।

[सं. एल-40012/154/2001-आई आर (डी.यू.)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 13th June, 2012

S.O. 2320.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/132/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the Telecom District Engineer, Raisen (MP), and their workman, which was received by the Central Government on 13-6-2012.

[No. L-40012/154/2001-IR (DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/132/2001

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Santosh Kumar Yadav,
S/o Shri Kanshiram Yadav,

Ward No.3, Near Purnima Kirana Stores,
Raisen, Distt. Raisen (MP)

... Workman

Versus

Telecom District Engineer,
O/o Telecom District Engineer,
Raisen (MP)

...Management

AWARD

Passed on this 11th day of May, 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-40012/154/2001-IR(DU) dated 6-8-2001 has referred the following dispute for adjudication by this tribunal:-

“Whether the action of the management of TDE Raiser in terminating the services of Shri Santosh Kumar Yadav S/o Shri Kanshiram Yadav w.e.f. May 2000 is justified? If not, to what relief the workman is entitled for?”

2. The case of the workman, in short, is that he was appointed as a peon on daily wages in January 1993 against a permanent post and worked under the employment of the management till May 2000. He worked continuously more than 240 days under the provision of Section 25 B of the Industrial Dispute Act 1947 (in short the Act 1947). His service was suddenly discontinued by verbal order without one months notice or one month's pay in lieu of notice and retrenchment compensation in violation of the provision of Section 25 F of the Act, 1947. The management had also violated the provision of Section 25(G) and (H) of the Act, 1947. It is submitted that the workman be reinstated with back wages.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the alleged workman was never engaged on daily wages in the year 1993 and thereafter by the management. He had never worked 240 days in any calendar year. The question of violation of any provision of the Act, 1947 does not arise. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication-

I. Whether the alleged workman was in the employment of the management?

II. Whether the action of the management in terminating the services of the workman w.e.f. May 2000 is justified?

III. To what relief the workman is entitled?

5. The alleged workman after filing statement of claim absented and therefore the reference proceeded exparte against him on 11-5-2011

6. Issue No. I

According to the case of the alleged workman, he was engaged on daily wages in January 1993 and worked till May 2000 whereas the management states that he was

never engaged on daily wages by the management. To establish the fact, the management has adduced oral evidence. The management witness Shri Yatindra Kr. Poras is Telecom District Engineer Raisen (M.P). He has stated that as per record available, the alleged workman was never engaged by the management. His claim is baseless, fabricated and frivolous. His evidence is un rebutted. There is no reason to disbelieve his evidence. His evidence clearly shows that there was no relationship of employer and employee between the management and the alleged workman. His evidence shows that the alleged workman was never in the employment of the management. This issue is decided in favour of the management and against the alleged workman.

7. Issue No. II

Considering the above evidence, it is clear that the alleged workman was not in the employment of the management. Therefore the question of termination from services doesnot arise. This shows that there is no violation of the Act, 1947. This issue is, accordingly, decided against the alleged workman and in favour of the management.

8. Issue No. III

On the basis of the discussion made above, I find that the alleged workman is not entitled to any relief. Accordingly the reference is answered.

9. In the result, the award is passed without any order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 13 जून, 2012

का.आ. 2321.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार जर्नल मैनेजर, बैंक नोट प्रेस, देवास (एम.पी.) के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/128/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-6-2012 को प्राप्त हुआ था।

[सं. एल-16012/02/1995-आई आर (डी.यू.)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 13th June, 2012

S.O. 2321.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/128/96) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the General Manager, Bank Note Press, Dewas (MP)

and their workman, which was received by the Central Government on 13-6-2012.

[No. L-16012/02/1995-IR (DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/128/96

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

Shri Arjun Singh,
S/o Shri Shyamlal Singh,
Qr.No.70, Karmchari Colony,
Station Road,
Dewas(MP)

...Workman

Versus

General Manager,
Bank Note Press,
Dewas

...Management

AWARD

Passed on this 14th day of May 2012

1. The Government of India, Ministry of Labour vide its Notification . No.L-16012/2/95-IR(DU) dated 30-5-96 has referred the following dispute for adjudication by this tribunal:—

“ Whether the action of the management of Bank Note Press, Dewas in terminating the services of Shri Arjun Singh is legal and justified? If not, to what relief the workman is entitled to? ”

2. The case of the workman, in short, is that the workman Shri Arjun Singh was initially appointed as Mazdoor on 20-5-80 against vacant post. Later he was appointed as Mazdoor (control) against permanent post w.e.f. 26-4-83. Thereafter he was promoted to different posts and lastly he was promoted as an Examiner w.e.f. 30-9-87. It is stated that he became ill on 1-6-88 and informed the management and applied for leave. His health was deteriorated day by day and therefore his relative brought him to Ujjain for better treatment. He was treated for a pretty long time and was not in a position to file application for extension of leave. His relatives were illiterate and the workman had not filed application according to the procedure for extension of leave. It is stated that the workman received the order of dismissal dated 5-7-89 whereby he got knowledge of his termination. He was terminated from service without any notice in violation of the principle of natural justice. The termination was amount to retrenchment and he had not been paid any retrenchment compensation as has been provided in the Industrial Dispute Act (in short the Act). It is stated that the punishment of removal from service is also

disproportionate to the charge alleged to have been proved. It is stated that after termination, the workman is unemployed and there is no livelihood for himself and his family. It is submitted that the termination order dated 5-7-89 be set aside and the workman be reinstated with back wages.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the workman was appointed as Mazdoor (control) on 30-4-1983. Thereafter he was admittedly promoted on the post of counter. Lastly he was promoted on ad hoc basis on the post of Examiner vide order dated 30-9-87. It is stated that he became absent from duty on 1-6-88 unauthorizedly without any information. He was directed vide letter dated 9-9-88 to join his duty but he neither joined his duty nor gave any information about his absence nor submitted any medical certificate rather he submitted all medical certificates of different doctors on 5-7-89 while appeared on duty. However a copy of memorandum of charge was sent through registered post on 16-10-88 but the workman refused to acknowledge the same. The management therefore initiated a departmental enquiry and Enquiry Officer was appointed. After submission of enquiry report, the Disciplinary Authority passed order of dismissal from services on 5-7-89 for unauthorized absence. The workman preferred an appeal and also revision but the same were rejected. It is stated that during the tenure of his service from 1983 to 31-5-88 the workman was absent for 569 days without any information and sanctioned leave. On these grounds, it is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of the following issues are for adjudication-

I. Whether the departmental enquiry conducted by the management against the workman is proper and legal?

II. Whether the management is entitled to prove the misconduct of the workman?

III. If so, then whether the management has proved the misconduct against the workman in the Tribunal?

IV. If so, then whether the punishment of removal from services of the workman is proportionate to the charge proved?

V. To what relief the workman is entitled?

5. Issue Nos. I & II

These issues are taken up as preliminary issues. After perusing the evidence on record and after hearing the parties, it was held that the departmental enquiry conducted by the management against the workman is illegal and not proper. As such Issue No. I is already earlier decided vide order dated 14-6-2010.

6. Another question was raised as to whether the management is entitled to prove the misconduct of the

workman. The management has subsequently amended the pleading that the management be permitted to lead evidence to prove misconduct in Court which was allowed subject to payment of cost vide order dated 10-1-2011. Thus this issue is also already earlier decided that the management is entitled to lead evidence to prove the misconduct of the workman. Both the issues are accordingly, earlier decided.

7. Issue No. III

The burden of proof is on the management to prove misconduct of the workman. According to the management, the workman was absent from duty w.e.f. 1-6-88 unauthorisedly without any information and remained absent till the issuance of charge sheet dated 29-9-88. It is also stated that during the entire service from 1983 to 31-5-88, he was absent for 569 days without any information or sanctioned leave. It is also a case that the workman gave all his medical certificates only on 5-7-89 to the management at the time of reporting on duty. The Disciplinary Authority found him guilty of the charges of misconduct of unauthorized absence and passed the order of dismissal from services on 5-7-89. The appeal and revision were filed but the same were rejected.

8. On the other hand, the workman has contended that he became ill on 1-6-88 and informed the management and applied for leave when his condition of health was deteriorated, his relative brought him to Ujjain for better treatment. He was not in a position to file application of extension of leave. His relative were illiterate and were not known to the procedure of extension of leave. It is stated that the service period of the workman was satisfactory as such he was promoted time to time.

9. Now the evidence of the management is to be examined to see as to whether the management is able to prove misconduct. The management has examined only one witness in the case. The management witness Shri K. K. Pandit is presently working as Administrative Officer in Bank Note Press, Dewas and joined there on 7-2-78. He has come to support the case of the management. He has stated that the workman was unauthorized absent w.e.f. 1-6-88 and the Disciplinary Authority by invoking the provision of Rule 19 (ii) of CCS (CCA) Rules, 1965 and after considering the totality of the case imposed the major penalty of removal from service with immediate effect vide order dated 5-7-89. In cross-examination, he has stated that the workman was not working under him. He has stated that he had filed documents to prove his unauthorized absence. But no documentary evidence is proved to show that he was unauthorized absent and also for how many days he had worked. He has stated that there is a card punching machine and time and date is punched in the card which is kept in the card time office. The said punching card of the workman is not produced to prove his absence. He has also stated that there is attendance register also, for marking attendance and the

said attendance register is not produced in court. The management has also not explained as to why these documents are not produced. When there is documentary evidence to prove the fact of misconduct, the said primary evidence i.e. the documents itself is only sufficient to prove misconduct and the oral evidence on the said fact appears to be not reliable. He has stated that the statement of absence is filed but the documents on which the statement of absence are based, are not filed. Moreover the statement of absence is also not proved in the case nor the maker of the statement is examined. This shows that the relevant documents are in possession of the management but those documents are not filed for the reason best known to the management which are the primary evidence to prove misconduct.

10. There are only two documents marked in the case which are Exhibits M/1 and M/2. The same are admitted by the workman. Exhibit M/1 is the chargesheet dated 29-9-88. This is filed to show that there was a charge on the workman that he was unauthorized absent w.e.f. 1-6-88 and he was advised by a letter dated 9-9-88 to join on duty. This is simply an allegation and it does not prove the charge of unauthorized absence. Exhibit M/2 is the impugned order dated 5-7-89 whereby the workman was terminated from services. These documents do not prove misconduct of the workman. Rather the relevant documents are concealed by the management to file in Court whereby it was to be proved that the workman was unauthorized absent and he had not informed the management and applied for any leave.

11. On the other hand, the workman Shri Arjun Singh is also examined in the case. He has stated in his evidence that he had not committed any misconduct. He was terminated from services vide order dated 5-7-1989. At the time of preliminary issue, he has stated in his evidence that he was sick from 1-6-88 and informed the management and gave application for leave. His condition deteriorated and the relative brought him to Ujjain. He was treated for long time. He was seriously ill and therefore he did not send for extension of leave and the illiterate relatives were unknown to the procedures of extension of leave. In cross-examination, he has stated that he filed medical certificates of his illness in the office but in the afternoon i.e. on 5-7-89, he was served with termination letter. The pleadings of the management also shows that the management has admitted that the workman had filed medical certificates of his illness on the day when the termination was served on him. There is specific pleading and evidence of the workman that he applied for leave on 1-6-88 to the management. The management has not produced Leave Register of the workman to show that no such leave was sanctioned nor any application for leave on the ground of illness was filed. The management has also not filed those admitted medical certificates which were submitted by the workman to the management. It appears that the absence cannot be

termed as unauthorized unless it is proved that the absence is without any reasonable cause. In the case, it appears that the management has not filed and proved the relevant documents to prove willful absence or unauthorized absence of the workman from duty.

12. The learned counsel for the management has argued that it is an admitted fact that the workman was absent since 1-6-88 and had not reported on duty till issuance of charge sheet. It is submitted that this itself establishes that the workman was unauthorized absence. The learned counsel for the workman urged that it does not amount to unauthorized absence unless it is proved that the workman was willful absent and there was no reasonable cause for his absence whereas in this case, there is a specific plea that the workman informed the management and applied on 1-6-1988 for leave. Thereafter he was seriously ill and was brought to Ujjain for better treatment. Moreover it is further stated that when he recovered from illness, he went on duty and filed medical certificates to the management. This fact is admitted in the pleading of the management that the workman gave medical certificates. This aspect of the case clearly shows that it was not a willful absence from duty. The management has failed to produce documents in court to show that no such leave application was filed and no such leave was sanctioned. This shows that the management has failed to prove misconduct against the workman in Court. This issue is, thus decided in favour of the workman and against the management.

13. Issue No. IV

The learned counsel for the workman has raised question on the point of legality of the impugned punishment order dated 5-7 -89 passed by the Disciplinary Authority by invoking the provision of Rule 19 (ii) of Central Civil Services (Classification Control Appeal) Rules 1965. It is stated that the management was not justified in invoking the provision of Rule 19(ii) of the CCS (CCA) Rules 1965 for punishing the workman. It is stated that the pleading of the management itself shows that on the day of passing the impugned punishment order i.e. on 5-7-1989 the workman was present and filed medical certificates to justify his reasonable cause for absence. Moreover the management had initially chosen to hold regular enquiry in accordance with the procedure prescribed in Rule 14 of the said rules, 1965. It is alleged by the management in his pleading that the workman had refused to receive the chargesheet sent by registered post and therefore the management instead of adopting the procedure of Rule 14 (20) of the Rules 1965 to proceed ex parte passed the impugned order of punishment invoking the provision of rule 19 (ii) of the Rules 1965 is unjustified and not tenable.

14. On the other hand, the learned counsel for the management has argued that the Disciplinary Authority was justified in invoking Rule 19(ii) as the workman did

not appear and notices were not properly served by the Enquiry Officer as he was not found at the address by the postal peon. Before discussing the point, it is proper to reproduce the Rule 14(20) and Rule 19 (ii) of CCS (CCA) Rules 1965 which are as follows—

“Rule 14(20)—

If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold the inquiry ex parte.”

Rule 19-

Special procedure in certain cases- Notwithstanding anything contained in rule 14 to rule 18—

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

It is clear from the pleadings of the management that the chargesheet was sent by registered post and it was refused by the workman which is amount to service of the charge sheet. It is also clear from the pleading that on the date of passing the impugned order, the workman appeared and filed medical certificates to justify his absence. There is also specific plea of the workman and has also adduced oral evidence that the workman informed the management on 1-6-1988 and forwarded an application for leave but the management failed to produce the documents in court that no such leave was sanctioned. Thus it is clear that there was no reasonable ground to the management to invoke the provision of Rule 19 (ii) of the CCS (CCA) Rules 1965.

15. The learned counsel for the management has relied a decision reported in AIR 2005 SSC 768 Kendriya Vidyalaya Sangathan and another Vrs. S.C. Sharma wherein the Hon 'ble Apex Court has held that—

“We find that for application of Rule 19(ii) in the background of Rule 14 of the Rules, the basic requirement is that a conclusion has to be recorded that it is not reasonably practicable to hold the inquiry proceedings. Such a finding does not appear to have been recorded. Therefore, the views expressed by the CAT as affirmed by the High Court do not suffer from any infirmity.”

I find that the said ruling of the Hon 'ble Apex Court is not helpful to the management rather under the circumstances discussed above, it is clear that it is helpful to the workman because there was no reasonably practicable to invoke the provision of Rule 19 (ii) of CCS (CCA) Rules 1965 for punishing the workman when the remedy was in Rule 14(20) and the workman appeared on

the day of passing impugned order dated 5-7-89. In this way also the impugned order is fit to be set aside.

16. Moreover on the basis of discussion made above, it is clear that the management has failed to prove misconduct against the workman and therefore the impugned order of punishment, appellate order and Revisional order against the workman are fit to be set aside. Thus it is clear that the action of the management in terminating the services of the workman w.e.f. 5-7-89 is unjustified and set aside. This issue is decided in favour of the workman and against the management.

17. Issue No. V

Now the important question is as to whether the workman is entitled to be paid back wages. According to the workman, he is unemployed and the only source of livelihood was stopped. The management has not controverted this pleading of the workman. The workman has supported this fact in his evidence as well. He has stated that as he was terminated from service, he is not getting any employment. He is unemployed. In cross-examination he has stated that the family is carrying on from the pension of the mother. The management has not adduced any evidence either oral or documentary. This shows that he is not gainfully employed since the date of termination. As such he is entitled to back wages. The management is directed to reinstate the workman from the date of termination with all back wages and consequential benefits. Accordingly the reference is answered.

18. In the result, the award is passed without any order to costs.

19. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 14 जून, 2012

का.आ. 2322. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केंद्रीय सरकार डिप्टी जनरल मैनेजर, हिन्दुस्तान एअरनोटिक्स लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केंद्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या सी.आर. नं.52/2007) को प्रकाशित करती है, जो केंद्रीय सरकार को 14-6-2012 को प्राप्त हुआ था।

[सं. एल-14011/04/2006-आई आर (डी.यू.)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2012

S.O. 2322.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. C. R. No. 52/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the employers in relation to

the Dy. General Manager, Hindustan Aeronautics Ltd. and their workmen, which was received by the Central Government on 14-6-2012.

[No. L-14011/04/2006-IR (DU)]
RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated: 21st May, 2012

PRESENT

Shri S. N. NAVALGUND, Presiding Officer

C.R. No. 52/2007

I PARTY

1. The General Secretary,
Casual & Contract Workers Assn.
111, 1st Floor, Kasturba Sanga Building,
Gandhinagar,
BANGALORE-560009

2. The President,
Vimanpura Contractors Assn.,
209, 8th Main, 11th Cross,
LIC House, Jeevan Bheema Nagar,
BANGALORE-560075

II PARTY

The Dy. General Manager (P&A)
Hindustan Aeronautics Ltd.,
Design Complex,
Vimanpura Post,
BANGALORE-560017

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) has referred this dispute vide order No. L-14011/4/2006-IR (DU) dated 16-03-2007 for adjudication on the following Schedule:

SCHEDULE

"Whether the action of the management of Hindustan Aeronautics Ltd., Bangalore (Principal Employer) in deducting the double wages for one day's absence from the contract workers is fair, legal and justified? If not, to what relief the affected workmen are entitled?"

2. After receipt of the reference pursuant to the notices issued by this court the General Secretary of the first party No.1 Union entered his appearance through Shri Muralidhara, Advocate and filed his Claim Statement on 18-9-2007. In spite of giving several opportunities to the first party No. 2 never appeared and filed the claim statement. Subsequently though several opportunities were given to the Second party counsel to file the counter

statement the same was not availed and the matter was posted for evidence of the first party No.1 on merit.

3. The learned counsel appearing for the first party No.1 after availing several adjournments, today filed a memo to the effect that the first party No.1 union is not pressing the reference and it may be disposed off. Since as already adverted to by me above, the first party No. 2 did not enter appearance and file claim statement and when the only first party No.1 union which filed the claim statement filed a memo that it is not pressing the reference does not survive for consideration. In the result, I pass the following award:

AWARD

The reference is rejected as not pressed.

(Dictated to PA transcribed by her corrected and signed by me on 21-05-2012)

S. N. NAVALGUND, Presiding Officer

नई दिल्ली, 14 जून, 2012

का.आ. 2323.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सुपरिन्टेंटिंग इन्जीनियर, सी.पी.डब्ल्यू.डी., आर. के. पुरम के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नई दिल्ली के पंचाट (संदर्भ संख्या 28/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2012 को प्राप्त हुआ था।

[सं. एल-42011/103/2011-आई आर (डी.यू.)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2012

S.O. 2323.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the Superintending Engineer, CPWD, R. K Puram and their workman, which was received by the Central Government on 14-6-2012.

[No. L-42011/103/2011-IR (DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO. 1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I. D. No. 28/2012

The General Secretary,
All India CPWD (MRM),
Karamchari Sangathan H. No. 4823,
Gali No.13, Balbir Nagar Extension,
Shahdara, Delhi - 32

... Workman

Versus

The Superintending Engineer,
Electrical Coordination Circle, CPWD,
East Block, R.K. Puram,
New Delhi

Management.....

AWARD

Central Public Works Department (in short the management) engaged Shri Ram Bahadur Singh as Enquiry Clerk on Muster Roll with effect from 21-03-1983. He was a matriculate. He worked with management continuously. He raised a demand that his services may be regularized, which demand was not conceded to. He, alongwith Shri Bhushan Kumar and Shri Vishesh Kumar approached CPWD Mazdoor Union for redressal of their grievance. The Union raised the dispute before Conciliation Officer. The dispute so raised by the Union was referred to this Tribunal by the appropriate Government, vide order No. L-42011/52/93-IR/DU dated 6-02-1995 for adjudication. This Tribunal passed an award on 21-08-2002 commanding the Management to consider the case of Bhushan Kumar, Vishesh Kumar and Ram Bahadur Singh for regularization in services by adopting proper and prescribed procedure.

2. The services of the claimant, namely Ram Bahadur Singh were not regularized. All India CPWD (MRM) Karamchari Sangathan raised a dispute concerning regularization of services of Ram Bahadur Singh before the Conciliation Officer. Thereafter he breathed his last on 06-06-2011. Since conciliation proceedings failed, appropriate Government referred the dispute to the Tribunal for adjudication vide order No. L-42011/103/2011-IR(DU), New Delhi dated 18-01-2012, with the following terms:

“Whether the action of the management of Superintendent Engineer, CPWD, New Delhi, Coordination Circle (Electrical); CPWD, East Block, R.K. Puram, New Delhi in not regularizing the services of Shri Ram Bahadur Singh, Son of Shri Jhabbu Singh, working as Enquiry Clerk on muster roll with effect from 21-4-1983 is justified? What relief the workman concerned is entitled to and from which date?”

3. Shri Satish Kumar Sharma, authorized representative for the deceased claimant, made a statement on 09-04-2012 that the son of the claimant is not willing to file a claim statement before this Tribunal. According to him, other legal heirs of the deceased, Ram Bahadur Singh, are not interested in raising their grievance in the matter. He showed his inability to file claim statement on behalf of the legal heirs of the deceased claimant.

4. Management was called upon to file its response to the reference order. The Executive Engineer, H Division, C.P.W.D. filed his response on the reference order pleading therein that an earlier dispute raised concerning regularization of the claimant was adjudicated by this

Tribunal. Subsequent to that adjudication, the claimant was called upon to appear for a test for his regularization. Shri Ram Bahadur Singh opted not to appear for that test. Thereafter Shri Ram Bahadur Singh expired, hence he could not be regularized in the services of the management.

5. Reference of dispute, relating to regularization of Shri Ram Bahadur Singh as Enquiry Clerk, made for adjudication to this Tribunal is not a disputed fact. Shri Sharma does not dispute that this Tribunal entered into articulation of facts and passed an award dated 21-08-2002. It is also not disputed that in that award, the Tribunal commanded the management to consider regularization of services of the claimant by adopting proper and prescribed procedure. These facts highlight that the dispute relating to regularization of services of Ram Bahadur Singh as Enquiry Clerk was referred to this Tribunal, which was adjudicated when award dated 21-08-2002 was passed.

6. The question for consideration comes as to whether the appropriate Government was justified in making the present reference, during the period when award dated 21-08-2002 subsists. As the facts highlight, subsequent reference is between the same parties on the same facts. When award dated 21-08-2002 is in force, in respect of the industrial dispute, appropriate Government cannot refer the said dispute afresh to this Tribunal by merely changing the phraseology of the dispute. This Tribunal will not have any jurisdiction to entertain the fresh reference in respect of the subject matter, on which award dated 21.08.2002 binds the parties. There can be no reference when a valid award subsists. The Tribunal cannot invoke its jurisdiction to entertain this subsequent reference made by the appropriate Government, without application of mind. In case, precedents are needed, reference can be made to British India Corporation Ltd. (13 FJR 352) and Bangalore W.C. & Mills Ltd. [1968 (1) LLJ 55].

7. In view of the facts, referred above, it is crystal clear that during the currency of the award dated 21-08-2002, the appropriate Government was not competent to refer the dispute afresh for adjudication. The Tribunal cannot invoke its jurisdiction on the reference order. Consequently, the reference order is discarded with the observation that it is incompetent. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 21-05-2012

नई दिल्ली, 14 जून, 2012

का.आ. 2324.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाइरेक्टर जनरल (वर्कस) सी.पी.डब्ल्यू.डी., निर्माण भवन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट (संदर्भ संख्या 45/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-6-2012 को प्राप्त हुआ था।

[सं. एल-42011/105/2011-आई आर (डी.यू.)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th June, 2012

S.O. 2324.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure, in the Industrial Dispute between the Director General (Works) CPWD, Nirman Bhawan and their workmen, which was received by the Central Government on 14-6-2012.

[No. L-42011/105/2011-IR (DU)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE DR. R.K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX,
DELHI**

I. D. No. 45/2012

Shri Sriram through
All India CPWD(MRM) Karmchari Sangathan.
H.N.4823, Gali no, 13, Balbir Nagar Extension,
Shahdara, Delhi 32 ... Workman

Versus

The Director General (Works),
CPWD, Nirman Bhawan,
New Delhi 110 001 ... Management

AWARD

Shri Sriram joined the service as Electrician with CPWD (in short the management) on 12-02-1990 in the pay scale of Rs. 950-1500. He passed the trade test on 26-04-2007. On completion of 8 years service as skilled artisan, he was given wages in the scale Rs.4000—6000, in pursuance of Arbitration Award, 1988. He was promoted to the post of Mechanic (Elect.) on 06-09-2008 in the scale 4000—6000. Subsequently, grant of selection grade was treated as first ACP to the claimant. On completion of 10 years service thereafter, 2nd ACP was not granted to him. He raised a demand which was not considered by the management. He approached the All India CPWD (MRM) Karmchari Sangathan, which Union espoused his cause and raised a dispute before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government referred the dispute to this Tribunal, vide order No.L-42011/105/2011-IR(DU), New Delhi dated 01-02-2012, with the following terms:

“Whether the action of the management of Central Public Works Department (CPWD) New Delhi in non-grant of ACP after completion of 12 years of

service of Shri Sriram, S/o Shri Dhani Ram, Wireman but granting the same from dated of result of Trade Test i.e 16-10-2007 is legal and justified? What relief the workman is entitled to?"

2. The claim statement was filed on behalf of Shri Sriram pleading therein that he joined as electrician with the management on 12-02-1990. He passed the trade test for the post of Mechanic (Electrical) in Jan-Feb.2007 in first attempt. On completion of 8 years of service as trained artisan (wireman), he was given wages in the scale Rs.4000—6000 in pursuance of Arbitration Award, 1988. He was promoted to the post of Mechanic (Electrical) on 6-9-2008. Selection grade, granted to him on completion of 8 years of service, was treated as grant of first ACP by the management. Thereafter, on completion of 10 years service, he was eligible for grant of 2nd MACP in 2008. His pay would have been fixed in the scale Rs.5200—20200 with grade-pay of Rs.2800 with effect from 01-02-2008 on completion of 10 years service (after grant of selection grade).

3. Written statement was filed by the management detailing therein that the claimant joined the services as Electrician on 12-02-1990 in the scale 950-1500. It has been admitted that on completion of 8 years service as a trained artisan (wireman) he was granted selection grade in the scale Rs. 4000-6000, in pursuance of Arbitration Award 1988. It is also not disputed that on 06-09-2008, he was promoted to the post of Mechanic (Electrician) in the scale of Rs. 4000—6000. It is also not a matter of dispute that grant of selection grade to the claimant was treated as first ACP. However, the management projects that the claimant could not pass the trade test for electrician on 21-07-99, 06-04-2001, 03-04-2002, 16-06-2003, 27-10-2004 and 26-10-2005. He could pass the trade test for the post of electrician only on 24-04-2007. It is not disputed that the claimant had rendered 10 years service after grant of selection grade. The management projects that 2nd MACP has been recommended in favour of the claimant with effect from 01-09-2008, in the scale of Rs. 5200—20200 with grade pay of Rs. 2800. The management asserts that since the claim of Shri Sriram has been conceded, no adjudication is called for.

4. Shri Sriram has placed order no.10(12)/E-2/E.D.-10/2012-13/1082 dated 19-05-2012 issued by the Executive Engineer (Elec.), over the record, which order is not disputed by Shri Sarvjit Singh, UDC, appearing on behalf of the management.

5. On perusal of the order referred above, it emerges that 2nd MACP has been granted to the claimant by the management in the scale Rs. 5200—20200 with Grade Pay of Rs.2800, with effect from 01-09-2008. Thus, it has crept over the record that the claim made by the claimant has been conceded to by the management. The management had granted 2nd MACP to the claimant with effect from 01-09-2008 and his claim has been satisfied. Since

grievances of the claimant have been redressed by way of grant of 2nd MACP, in the scale Rs. 5200—20200 with Grade Pay of Rs. 2800 with effect from 01-06-2008, the Tribunal is not required to enter into adjudication of the controversy. Claim put forward by the claimant has been satisfied and an award is, accordingly, passed. It be sent to the appropriate government for publication.

Dr. R.K. YADAV, Presiding Officer

Dated: 23-05-2012

नई दिल्ली, 15 जून, 2012

का.आ. 2325.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 04/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/59/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2325.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workmen, which was received by the Central Government on 31-05-2012.

[No. L-12012/59/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 3rd May, 2012

Present: A.N. JANARDANAN Presiding Officer

Industrial Dispute No. 4/2011

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their workman]

Between

Sri K. Suresh : 1st Party/Petitioner

And

Indian Overseas Bank

Represented by its Managing Director

763, Anna Salai

Chennai-600002

: 2nd Party/Respondent

Appearance:

For the 1st party/Petitioner : Sri C. R. Chandrasekaran,
Advocate

For the 2nd Party/Management : M/s N.G.R. Prasad
& Stalin, Advocates

AWARD

The Central Government, Ministry of Labour vide its Order No. L-12012/59/2010-IR(B-II) dated 09-12-2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Indian Overseas Bank, Chennai in terminating the service w.e.f. 01-09-2009 of Sri K. Suresh is legal and justified? What relief is the workman entitled to?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 4/2011 and issued notices to both sides. Both sides entered appearance through Advocates and filed their Claim, Counter Statements as the case may be.

3. In the enquiry WWI and MWI were examined and documents marked on either side.

4. While so, the ID was mooted for Lok Adalat and discussions were held and eventually while the matter stood posted for final settlement today both parties together with the counsel appeared and filed Memorandum of Settlement under Section-18 (1) of the ID Act.

5. The Management agreed to appoint the petitioner in the service of the Bank as Messenger with salary of the scale of pay of Messengers from the date of his reporting for duty and the petitioner agreed not to claim any other relief and to forgo claim of back wages, continuity of service and monetary and other service benefits and further assured that the settlement has been to his full satisfaction and the settlement has been arrived at voluntarily in view of the fresh appointment given by the Bank to the petitioner and he gives up his claim in the ID.

6. I am satisfied that the settlement has been to the benefit of both the parties, especially to the petitioner and that the same has been arrived at in full satisfaction and the settlement is only to be recorded whereby no further claim by the petitioner survives against the Management for being obtained.

7. The settlement is recorded and an award is passed in terms of the settlement and the Respondent/Management is directed to appoint the petitioner as Messenger with salary of the scale of pay of Messengers

with effect from today or the date of his reporting for duty as is deemed fit.

8. The Memorandum of Settlement forms part of the Award/Record.

A. N. JANARDANAN, Presiding Officer

ANNEXURE

**BEFORE THE HONOURABLE CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHENNAI**

I.D. No. 4 of 2011

Shri. K. Suresh

... Petitioner/Workman

vs.

M/s. Indian Overseas Bank
Represented by its Managing Director
Central Office
No. 763, Anna Salai
Chennai- 600 002

... Respondent/Management

**JOINT MEMO FILED BY THE PETITIONER
AND THE RESPONDENT**

It is submitted that the above dispute has been referred for adjudication to this Hon'ble Tribunal for adjudicating the issue relating to non-employment of the petitioner Shri. K. Suresh under Section 2-A of the Industrial Disputes Act, 1947.

It is further submitted that the issue involved in the above matter has been amicably settled between the parties and the Settlement under Section 18 (1) of the Industrial Disputes Act, 1947 dated 30-04-2012 has also been arrived between them. A copy of the 18(1) Settlement is filed herewith, which may be read as part of this Joint Memo.

Under these circumstances, it is prayed that this Honourable Court may be pleased to pass an Award in I.D. No.4 of 2011 in terms of the Settlement dated 30-04-2012 under Section 18(1) of the Industrial Disputes Act arrived at between the petitioner and respondent and thus render justice.

Dated at Chennai on this the 30th day of April 2012.

This settlement has been entered between Mr. K.Nagabhushanam, Hindu, aged about 38 years, residing at Old No.9, New No.11, Sayee Nilayam, Prithivipakkam, West Road, Ambattur, Chennai-600053.

And

The Management of Indian Overseas Bank, Central Office at No. 763, Annasalai, Chennai- 2 on this the 30th day of April 2012 as under:

Whereas Shri. K. Suresh has raised Dispute under Section 2-A of the Industrial Disputes Act, 1947 against

the Management of Indian Overseas Bank regarding his non-employment which dispute was subsequently referred for adjudication to the Hon'ble Central Government Industrial Tribunal-cum-Labour Court as I.D.No. 4 of 2011.

During the pendency of above I.D. No.4 of 2011, out of negotiation between the parties; the above matter has been settled amicably and they have arrived the Settlement on the following

TERMS

(a) In respect of claim of reinstatement with back wages, continuity of service and other benefits made by Shri. K. Suresh against the Management of Indian Overseas Bank, the Management has agreed to appoint the petitioner in service of the bank as a Messenger and the said appointment shall be made with effect from the date Shri. K. Suresh reports for duty and his salary will be paid as per scale of pay of Messengers from the date of his reporting.

(b) It is agreed to by the petitioner that in view of the appointment as a Permanent Messenger, the petitioner is not claiming any other relief and he shall forego his claim of back wages, continuity of service and monetary and other service benefits made in the above I.D. No.4 of 2011.

(c) The petitioner hereby assures that the above Settlement has been entered to his full satisfaction in respect of the above I.D. No.4 of 2011. He is not having any other claim against the Management in the above dispute. The petitioner has agreed upon the above Settlement voluntarily and in view of the fresh appointment given by the Bank, the petitioner would give up his claim made in I.D. No.4 of 2011.

It is further agreed by both parties that they shall appeal before the Honourable Central Government Industrial Tribunal - cum - Labour Court to produce this Settlement and to request the Court to pass an Award in terms of this settlement in ID. No.4 of 2011.

Sd/-
K. Suresh
Petitioner

Witnesses

1. Sd/- illegible

2. Sd/- illegible

Sd/-
Deputy General Manager
for (Indian Overseas Bank)
Respondent

नई दिल्ली, 15 जून, 2012

का.आ. 2326.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 01/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/52/1997-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2326.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/1998) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol, now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 08-05-2012.

[No. L-12012/52/1997-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT:

Sri Kishori Ram, Presiding Officer/Link Officer

REFERENCE No. 01 OF 1998

PARTIES:

Industrial dispute between the management of Dena Bank, Durgapur, Burdwan.

Vs.

Sri Sadananda Das

REPRESENTATIVES:

For the management: None

For the union (Workman) None

INDUSTRY: Bank

State : West Bengal

Dated the 13-04-12/12-04-12

AWARD

In exercise of powers conferred by clause (d) of Sub-Section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter No.L-12012/52/97-IR(B-II) dated 27-02-1998 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE.

“Whether the denial of the Management of Dena Bank, Durgapur for permanent absorption of Sh. Sadanand Das, Badlee worker is justified? If not, to what relief the workman is entitled?”

Having received the Order No. L-12012/52/97 -IR (B-II) dated 27-02-1998 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 01 of 1998 was registered on 16-03-1998 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.

From the perusal of the case record I find that Sri P.K. Das, Ld. Advocate for the workman had filed a memorandum bearing Ref. No. KRO/PER/S-412/2011 dated 19-08-2011 of Dena Bank's Regional Office, Kolkata duly signed by the Dy. Regional Manager of the Bank on 04.04.12 which shows that the case has been settled between the parties as the workman, Sadananda Das, has been confirmed as Waterboy-cum-Sepoy w.e.f. 30.06.2011. Since the workman has already been confirmed as Waterboy-cum-Sepoy in the said bank, I find no longer the Industrial Dispute exists, therefore the case is closed and accordingly an order of No Disputes is hereby passed.

In view of the above, the industrial dispute no more exists and hence it is hereby ordered.

ORDER

Let an “Award” be and same is passed as per above. Send the copies of the Award to the Govt. of India, Ministry of Labour, New Delhi, for information and needful.

KISHORI RAM, Presiding Officer/Link Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2327.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/188/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/131/2000-आईआर (बी-II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2327.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. CGIT/LC/R/188/2000) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 23-05-2012.

[No. L-12012/131/2000-IR (B-II)]

SHESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/188/2000

Presiding Officer: SHRI MOHD. SHAKIR HASAN

Shri Dinesh Kumar Kahar,
S/o Shri Premal Kahar,
Rajendra Ward,
Distt. Kareli,
Narsinghpur

... Workman

Versus

The Branch Manager,
Central Bank of India,
Karali Branch,
Narsinghpur (MP)

... Management

AWARD

Passed on this 4th day of May 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/131/2000/IR (B-II) dated 30-10-2000 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of Central Bank of India, Kareli Branch, Distt. Narsinghpur in not giving the permanent appointment to Shri Dinesh Kumar Kahar and terminating the services from 7-10-99 is legal and justified? If not what relief the concerned workman is entitled to?”

2. The case of the workman, in short, is that the workman Shri Dinesh Kumar Kahar was working from February 1992 to 7-10-99 continuously in the Kareli Branch of the Bank. He is entitled to attain the status of permanent employee. He was terminated from service on 7-10-99 without any notice and without payment of retrenchment compensation and gratuity under the provision of Section 25 F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that he is unemployed and has crossed the limit of age. It is submitted that the workman be reinstated with full back wages.

3. The management appeared and filed Written statement to contest the reference case. The case of the management, inter alia, is that the workman was not working in Kareli Branch of the Bank from February 1992. It is stated

that when the alleged workman was not employed in the Bank, the question for reinstatement with full back wages doesnot arise. It is stated that the provision of the Act, 1947 is not applicable. He was not appointed by the Bank. As such the question to acquire permanent status doesnot arise. On the above circumstances, he was not entitled to any retrenchment compensation. It is submitted that the alleged workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

- (i) Whether the action of the management in terminating the services of Shri Dinesh Kumar Kahar w.e.f. 7-10-99 is legal and justified?
- (ii) Whether the action of the management in not giving the permanent appointment to the workman is legal and Justified ?
- (iii) To what relief the workman is entitled ?

5. **Issue No. I**—Now the very important point for consideration is that as to whether Shri Dinesh Kumar Kahar was in the employment of the management or not. The specific case of the workman is that he was in the employment of the management from February 1992 till 7-10-99 when he was terminated from services without complying the provision of Section 25 F of the Act, 1947 whereas the management states that he was never employed by the management and as such the provision of the Act, 1947 is not applicable. Thus it is clear that if the workman fails to prove that he was in the employment of the management, he is then of no where. On the other hand, if it is proved that the workman was in the employment in the Bank, the management will be of no where and it is to be said that the entire story of the management is false and the management has not come with fair case in Court for the reason best known to the management.

6. Now in the above scenario, the evidence of both the parties are to be examined. The workman Shri Dinesh Kumar Kahar is examined in the case. He has supported his case in his evidence. He has stated that he was continuously working in Kareli Branch of the Bank from February 1992 and worked till 7-10-99 when he was terminated from service without complying the provision of the law. He has been cross-examined. He has stated that he was daily wages worker. He had not been given any appointment letter nor appointed in view of the recruitment rules. His evidence shows that he was in continuous employment till his termination. This is evident that he is a retrench worker under the definition of Section 2(oo) of the Act. He appears to be in continuous service as such he shall be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date with termination under the provision of Section 25 B of the Act. Since he was in continuous service for more than a year preceding the date with reference, the provision of Section 25 F of the Act is applicable.

7. The workman has supported in his evidence that he was not paid any retrenchment compensation as such the provision of Section 25-F of the Act appears to have been violated by the management.

8. On the other hand, the management has examined one witness namely Shri Manish Tripathi who is Branch Manager in Kareli Branch of the Bank. Initially in examination-in-chief he has stated that Shri Dinesh Kumar Kahar was never employed by the Bank on permanent post of peon from 1992 till 7-10-99. He has further stated that he never worked in the Branch for more than 240 days and whenever there was casual work, he worked as temporary and on casual basis and was paid for the work. His evidence shows that the workman was in the employment of the management in contradiction to the pleading of the management where there was complete denial of his engagement by the management. In cross-examination at para-7 the management witness has admitted that he filed affidavit of evidence on the basis of documents but those documents are not filed in Court. This shows that the management has concealed the best evidence for the perusal of the court for the reason best known to the management when it is established that the workman was in the employment of the Bank as casual Labour, the relationship of master and servant was established and the case of the management is not believed that he was never employed. There is only other case of the workman that he was in the employment of the Bank continuously till retrenchment is to be believed.

9. The management witness Shri Tripathi has further stated at para-8 that the workman had worked from 1992 to 7-10-97 in the Bank as casual labour. He had seen such records which were vouchers bearing the signature of the workman. This part of the evidence shows that the workman was in continuous employment in the Bank till termination. Since the pleading of the management is that the workman was never employed as such the provision of Section 25-F of the Act, 1947 appears to have not been complied by the management. It shows that the implied meaning is that no notice nor any compensation was paid to the workman before termination. Thus it is clear that the management has terminated the workman without complying the provision of Section 25-F of the Act, 1947 and the termination w.e.f. 7-10-99 was illegal and unjustified. Accordingly this issue is decided in favour of the workman and against the management.

10. **Issue No. II**—On the basis of the discussion made above, it is clear that the employment of the workman was on casual basis continuously till his termination. Admittedly he was not appointed on the basis of recruitment rules. I find that he is not entitled to be given the permanent appointment in the Bank in view of his casual engagement. This issue is, accordingly, decided in favour of the management and against the workman.

11. Issue No. III —Considering the entire evidence on record and the pleadings of both the parties, it is proved that the workman was in the employment of the Bank from February 1992 to 7-10-99 continuously on casual basis and he was terminated from the employment without complying the provision of Section 25 F of the Act, 1947. This is evident that the action of the management in terminating his services was illegal and unjustified. As such it is set aside.

12. The evidence of the workman clearly shows that the workman is unemployed after termination. There is no cross examination. There is no reason to disbelieve the evidence of the workman that he was not gainfully employed. He appears to be entitled to get back wages. Accordingly the management is directed to reinstate the workman with back wages from the date of termination and the reference is answered.

13. In the result, the award is passed without any order to costs.

14. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2328.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 2/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-06-2012 को प्राप्त हुआ था।

[सं. एल-12011/39/2010-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2328.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 2/2011) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workmen, which was received by the Central Government on 14-06-2012.

[No. L-12011/39/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 11th June, 2012

Present: A.N. JANARDANAN, Presiding Officer

Industrial Dispute No. 2/2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workman)

BETWEEN

The General Secretary : 1st Party/Petitioner
Indian Bank Employee's Union Union
6, Moore Street, Mannade Corner
Chennai-600001

Vs.

The General Manager : 2nd Party/Respondent
Indian Bank, Head Office
Rajaji Salai
Chennai-600001

APPEARANCE:

For the 1st Party/Petitioner : Sri J. Thomas
Union Jeyaprabhakaran,
Authorized
Representative

For the 2nd Party/
Management : Sri S. Dakshinamurthy,
Authorized Represen-
tative

AWARD.

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/39/2010-IR (B-II) dated 9-12-2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indian Bank, Chennai in denying one third scale wages to Smt. S. Kasthuri, a part time sweeper and 25% water carrying allowances, with effect from 1990 is legal and justified? What relief the workman is entitled for?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 2/2011 and issued notices to both sides. Both sides entered appearance through their Authorized Representatives and filed their Claim, Counter and Rejoinder Statements as the case may be.

3. The averments in the Claim Statement briefly read as follows :

Smt. Kasthuri, Sweeper, Kilkodungalur Branch of the Respondent/Bank was initially engaged to clean the premises of the Branch in 1989 for sweeping an area of about 860 Sq. ft. till April 1990. On 1-05-1990 with the acquisition of additional space the total sweeping area came to 1690 Sq. ft. She has been carrying drinking water too from a distance of more than 60 metres. By Circular Nos. IRD/2/80 dated 28-10-1980 and IRD/3/80 dated 18-11-1980 it was clarified that wages payable to PTS are to be determined on floor space area to be cleaned in terms of Sq. ft. and total working hours per week. In the Bipartite Settlement dated 10-04-1989 it is provided that wages to Part-Time Sweeper (PTS) is to be fixed based on the number of hours per week, which is the same as above. By Circular letter Ref. Staff-IRC-89 dated 23-02-1989 it was clarified that scale wages to eligible sweepers are to be considered from date of performing their duties as per the twin parameters. As per Circular IRD/2/80 she has to be paid additional 25% of the applicable rates of wages for carrying drinking water. Kasthuri was initially engaged in June 1989. From the branch communication dated 7-07-1995 to Zonal Office, Vellore it is evident that since 1-5-1990 she has been sweeping 1690 Sq. ft. area for 12 hours per week. She should have been fixed at 1/3rd wages of the scale of pay of Sub-Staff with proportionate 1/3rd increments every year as per Head Office guidelines. But she was being paid only ruling consolidated wages i.e. Rs. 100 per month during 1990, Rs. 175 from 1991 to 1997, Rs. 740 from 1-11-1997 and Rs. 1,050 from 1-11-2002. In spite of repeated representations 1/3rd wages was not paid. She was not absorbed with a view to deny benefits payable to employees in scale wages. It is obligatory on the Bank to extend the eligible scale wages and benefits immediately on extracting work from her. The Branch in a letter dated 27-02-1997 furnished information regarding the eligibility for 1/3rd scale wages to the employee. Since there was no response from the Management ID was raised, where before the conciliation bank expressed readiness to pay scale wages prospectively. Denial of the same retrospectively is unjust and illegal. Hence the claim.

4. Counter Statement averments briefly read as follows:

In leave vacancy the branches engage Casual Sweepers on casual basis occasionally. They are

not in the regular employment. Their names will not be borne in the rolls of the Bank. Kasthuri was engaged likewise only. Payments were made to her on daily basis. She being only a Casual Sweeper acquisition of additional space required to be set is irrelevant. She has no locus-standi to raise the dispute. Her services were utilized occasionally including bringing of water but not continuously. Regular pay-scale can be sanctioned to PTS in permanent service. She was engaged only on casual basis intermittently. The Circulars are not at all relevant to her case as the parameters are applicable only to PTS in permanent service. She was paid fixed wages as revised from time to time with arrears of consolidated wages. This cannot be a reason for claiming regular pay-scale in 1/3rd wages, she not being in permanent employment. She was not absorbed in service as she failed to fulfill norms for regular employment. She was not recruited in accordance with rules and regulations and was not entitled for regular employment. Endeavour of the petitioner is to gain employment by backdoor entry. For permanent appointment vacancy will be notified to the Employment Exchange to sponsor eligible candidates and appointment will be made in the due selection process. Her appointment was not as per due and regular procedure. Casual engagement will not attract regular pay-scale with other benefits. Proposal was not considered by Zonal Office as she was not working in permanent service. The communications are not relevant to be quoted to justify the claim. The claim of the petitioner for regular pay to her instead of claiming regularization prospectively is non-suited to her entitlement. When Kasthuri not permanent and not drawing regular pay-scale cannot claim additional pay as revealed from the correspondence dated 28-07-2005 from the Kilkodungalur Branch Circle Office, Vellore that the distance for fetching water was only 20 feet she is not entitled to water carrying allowance. Only after regularization casual labour becomes permanent and eligible for regular pay-scale. Claim for regular pay is not allowable. Benefit extended to permanent employee cannot be extended to casual employee. Her casual employment cannot be employment in the services of the Bank.

5. Rejoinder Statement contentions in a nutshell are as follows :

That Casual Sweepers are paid fixed consolidated wages is false. Those drawing monthly consolidated wages are classified as PTS. Kasthuri has been on continuous engagement after the death of the predecessor sweeper. It is

unimaginable that any casual engagement could be stretched for 26 long years. That she was paid daily wages is misleading. Kasthuri alone is arbitrarily singled out for discrimination in spite of Circular Letter Staff-IRC-89 dated 23-02-1989. Kasthuri had been paid monthly consolidated wages. Only when there is continuous engagement the question of monthly fixed wages with periodical revision arises. In the past similar claims were favourably considered by the Management giving retrospective effect. The career path drawn by the settlement dated 28-07-1993 PTS gets progression to higher wage category by providing that those with lower-scale wages including consolidated wages are also eligible to be posted in posts in higher scale wages arising due to various reasons such as retirement/conversion/opening of branch, etc. It is evident that those drawing monthly consolidated wages are to be placed on par with those drawing scale wages.

6. Points for consideration are:

- (i) Whether the denial of 1/3rd scale wages and 25% Water Carrying Allowance to Smt. S. Kasthuri, PTS w.e.f. 1990 is legal and justified?
- (ii) To what relief the concerned workman is entitled:

7. Evidence consists of Ex.W1 to Ex.W40 on the petitioner's side marked on consent and Ex. M1 to Ex. M7 on the Respondent's side also marked on consent with no oral evidence on either side.

Points (i) and (ii)

8. Perused the records, documents and written arguments on the Respondent's side. Heard both sides. On behalf of the petitioner arguments were advanced in terms of the averments in the Claim and Rejoinder Statements. Kasthuri was against a permanent vacancy and her work was extracted for long years since 1989 continuously with monthly consolidated salary. She has been grossly discriminated. She fulfilled the parameters for extending scale wages but is denied in unfair labour practice. She is entitled to 1/3rd scale wages and 25% of Water Carrying Allowance.

9. On behalf of the Respondent it was argued in terms of the averments in the Counter Statement. Absorption or regularization is not the issue referred before this Tribunal. On the issue of regularization this Tribunal lacks jurisdiction since that is not the matter referred.

10. Reliance was placed on the behalf of the Respondent on a number of decisions as below :

CHIEF COMMISSIONER OF INCOME TAX AND OTHERS VS. SMT. SUSHEELA PRASAD AND OTHERS Manu/SC/8140/2007 of the Supreme Court wherein it held "Held, when person enters temporary employment or gets engaged as contractual or casual workers and engagement

was not based on proper selection as recognized by relevant rules or Procedure, then he was aware of consequences of appointment being temporary, casual or contractual in nature—Person could not invoke theory of legitimate expectation for being confirmed in post when an appointment to post could be made only by following proper procedure for selection in consultation with Public Service Commission—Therefore, theory of legitimate expectation could not be successfully advanced by temporary, contractual or casual employees—State had not given any promise while engaging these persons either to continue them where they were or to make them permanent—State could not constitutionally make such promise—Theory could not be invoked to seek positive relief of being made permanent in post".

— MUKAND LTD. VS. MUKAND STAFF AND OFFICERS ASSOCIATION APPEAL (CIVIL) 5601 OF 2001 DATED 10-03-2004 of the Supreme Court wherein it held "... The dispute referred to by the order of Reference is only in respect of workmen employed by the appellant Company. It is, therefore, clear that the Tribunal, being a creature of the Reference, cannot adjudicate matters not within the purview of the dispute actually referred to it by the order of Reference. In the facts and circumstance of the present case, the Tribunal could not have adjudicated the issues of the salaries of the employees who are not workmen under the Act nor could it have covered such employees by its award".

— DELHI DEVELOPMENT HORTICULTURE EMPLOYEES UNION VS. DELHI ADMINISTRATION, DELHI AND OTHERS DATED 4-02-1992 of the Supreme Court wherein it held "6.....It has become a common practice to ignore the Employment Exchange and the persons registered therein, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money".

AND

— SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMADEVI AND OTHERS (Manu/SC/1918/2006) of the Supreme Court

The facts of the case in the above decisions are similar to the facts in the present case and dicta thereon are apt to be applied to the case on hand. In the absence of proof of facts constituting unfair labour practice on the workman by the Management or victimization or any

pleading to that score the decision in Uma Devi's cannot be carved out as an exception in aid of the advancement of the petitioner's claim.

11. In this case the workman is seen appointed only w.e.f. the year 1990 as a Casual Sweeper not on the rolls of the bank. She was not a candidate sponsored through Employment Exchange. The benefits of the circulars do not apply to casual sweepers. They cannot claim parity with regular employees. Her employment was irregular, if not illegal. She has not been on the rolls of the bank. As rightly argued on behalf of the Respondent the question of regularization or absorption is not a matter of arising for consideration before this Tribunal for adjudication. The question referred relates to denial of scale wages and water carrying allowances to which it could clearly be seen that the entitlement is only for permanent PTS and not to casual sweepers as per the circulars. The fact of the workman having supervened to work for long years due to some coincidence or contingencies not because of the Management and therefore, not intended by it, are not reasons why such employees should be meted out with legally unsustainable benefits to the gross prejudice of the public at large. The stand of the Management does not lead to precipitating instances of any unfair labour practices or victimization upon the concerned employee. I find considerable force in the arguments on behalf of the Respondent. Though her service ran continuous from the very inception having regard to the nature of her appointment as casual, the coveted claim does not blossom in her favour. If she has been singled out or discriminated it is to be especially proved by her, it being within her special knowledge only. Right not developing in her favour under a legal procedure in the given status and nature of her employment cannot be claimed rightfully. Hence denial of 1/3rd scale wages is only legal and justified and she is not entitled to any relief retrospectively.

12. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 11th June, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None
For the 2nd Party/Respondent : None

Documents Marked:

On the Petitioner's side

Ex. No.	Date	Description
Ex. W1	31-05-2005	Letter from Indian Bank Employees Union addressed to Assistant Commissioner of Labour
Ex. W2	24-03-2006	Letter from HO:HRM Deptt. addressed to Assistant Commissioner of Labour

Ex. W3	29-10-2007	Letter from Indian Bank Employees Union addressed to Assistant Commissioner of Labour
Ex. W4	28-10-1980	Indian Bank, HO : Industrial Relations Departt. Circular No. 2/80
Ex. W5	23-02-1989	Letter from HO : Personnel Deptt. addressed to Zonal Office
Ex. W6	28-07-1993	Settlement dated 28-07-1993 under I. D. Act between the Management and the Union
Ex. W7	27-02-2002	Settlement dated 27-02-2002 under I.D. Act between the Management and the Union
Ex. W8	30-01-1992	HO:Personnel Deptt. letter addressed to all Zonal Managers
Ex. W9	06-08-1992	Letter from Kilkodungalur Branch to Regional Office, Tiruvanna-malai
Ex. W10	12-03-1983	Letter from Kilkodungalur Branch to Regional Office Tiruvanna-malai
Ex. W11	07-07-1995	Letter from Kilkodungalur Branch to Zonal Office, Vellore
Ex. W12	28-09-1996	Letter from Zonal Office, Vellore to Kilkodungalur Branch
Ex. W13	17-10-1996	Letter from Kilkodungalore Branch to Zonal Office, Vellore
Ex. W14	31-01-1997	Letter from Zonal Office, Vellore to Kilkodungalur
Ex. W15	27-02-1997	Letter from Kilkodungalur Branch to Zonal Office, Vellore
Ex. W16	07-07-1997	Representation from S. Kasthuri to Zonal Manager, Vellore
Ex. W17	17-07-2003	Letter from Kilkodungalur Branch to Circle Office, Vellore
Ex. W18	22-10-2003	Letter from Kilkodungalur Branch to Circle Office, Vellore
Ex. W19	27-06-2003	Letter from Kilkodungalur Branch to Circle Office, Vellore
Ex. W20	17-07-2004	Letter from Kilkodungalur Branch to Circle Office, Vellore
Ex. W21	12-10-1993	Settlement dated 12-10-1993 under I.D. Act between the Management and Union

Ex. W22	11-11-1993	Settlement dated 11-11-1993 under I.D. Act between the Management and the Union	Ex. W35	24-09-1993	Settlement dated 24-09-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour
Ex. W23	29-04-1993	Settlement dated 29-04-1993 under I.D. Act between the Management and the Union	Ex. W36	13-01-1994	Settlement dated 13-01-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour
Ex. W24	06-12-1993	Settlement dated 06-12-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. W37	13-01-1994	Settlement dated 13-01-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour
Ex. W25	06-12-1993	Settlement dated 06-12-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. W38	13-01-1994	Settlement dated 13-01-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour
Ex. W26	21-08-1993	Settlement dated 21-08-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. W39	13-01-1994	Settlement dated 13-01-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour
Ex. W27	13-04-1993	Settlement dated 13-04-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. W40	23-08-1993	Settlement dated 23-08-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour
Ex. W28	25-05-1993	Settlement dated 25-05-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	On the Management's side		
Ex. W29	13-04-1993	Settlement dated 13-04-1993 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. M1	18-11-1980	Circular IRD 3/80 - regarding part time sweepers
Ex. W30	21-03-1991	Settlement dated 21-03-1991 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. M2	04-03-1983	Circular No. 24/83 of CO/ PERSONNEL DEPARTMENT of Respondent/Bank regarding engagement of Sub-Staff during leave vacancies
Ex. W31	21-03-1991	Settlement dated 21-03-1991 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. M3	16-01-2006 and 9-12-2005	Letter from Respondent to Union enclosing extract of minutes of Central Consultative Committee Meeting for Award Staff held on 9-12-2005
Ex. W32	08-06-1994	Settlement dated 08-06-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. M4	16-02-1995	Circular—IRC—95—Regarding part time sweepers enclosing circular IRD/2180 dated 28-10-1980
Ex. W33	30-05-1994	Settlement dated 30-05-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. M5	19-06-1995	Copy of letter from Ministry of Labour, Government of India, New Delhi - Regarding engagement of casual sweepers
Ex. W34	30-05-1994	Settlement dated 30-05-1994 under I.D. Act between the Management and the Union before Assistant Commissioner of Labour	Ex. M6	02-06-2005	Copy of 8th Bipartite Settlement matter relating to Part Time Employees

Ex.M7 18-08-2008 Minutes of Central Consultative Committee Meeting with Union

नई दिल्ली, 15 जून, 2012

का.आ.2329.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कॉरपोरेशन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, पणजी के पंचाट (संदर्भ संख्या आईटी/121/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/101/2007-आईआर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. IT/121/2007) of the Industrial Tribunal/Labour Court, Panaji, now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Corporation Bank and their workmen, which was received by the Central Government on 31-05-2012.

[No. L-12012/101/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL AND LABOUR COURT, GOVERNMENT OF GOA AT PANAJI

(Before Smt. Bimba K. Thaly, Presiding Officer)

Reference No. IT/121/07

Shri Kushali Kusta Gaonkar
R/o H.No.-25, Kajuwada,
Ganibag, Morpiria,
Cuncolim, Goa.

... Workman/Party I

V/s

Corporation Bank,
Salgaonkar Chambers,
Near Patto Bridge,
Panaji, Goa.

... Employer/Party II

Adv. Shri R.Brass D'sa for Party I/Workman
Adv. Shri P.J. Kamat for Party II/Employer

AWARD

(Passed on 4th day of April, 2012)

In exercise of the powers conferred by clause (d) of sub section (1) of Section 10 of the Industrial Disputes

Act, 1947 (14 of 1947) the Government of Goa by order dated 11-12-07 bearing number L-12012/101/2007-IR(B-II) referred the following dispute for adjudication by this Tribunal.

“Whether the action of the management of the Corporation Bank, Goa in dismissing Shri Kushali Kusta Gaonkar, Clerk from employment w.e.f. 16-11-2006 is legal and justified? If not, to what relief the workman is entitled for?”

2. On receipt of the reference, a case was registered under No. IT/121/07 and registered A.D. notices were issued to the parties upon which Party I filed the claim statement at Exb. 6 and Party II filed the written statement at Exb.10. Party I then filed the rejoinder at Exb. 11.

3. It is in short the, case of Party I in the claim statement that the workman was initially employed with Party II/bank as a sub staff at Amona branch of the said Bank w.e.f. 10-10-94. That thereafter the workman was promoted to the post of Clerk on probation and was posted at San Jose de Areal branch w.e.f. 27-2-06 and was assigned the work of handling of cash at the relevant time. That on 14-6-06 one Shri.Mohammad Abbas came to the bank at 3 :20 pm and requested the workman to deposit an amount of Rs. 18,000 in his account bearing number 8512. That since the cash transaction timings for that day was over, the workman requested Shri Abbas to come on the next day for depositing the said amount in his account but Shri.Abbas requested the workman to some how deposit the said amount in his account as he had issued cheque to the third party. That the Party initially refused to accept the cash amount as Shri Abbas pleaded to keep the amount in the bank itself and credit it in his account on the next day because it was not safe to keep so much cash amount in his house and accordingly the workman with much hesitation and reluctance accepted the request of Shri Abbas. It is stated that on 15-6-06 the cheque issued by Shri Abbas for Rs. 22,000 was deposited in the bank during early morning hours and by that time the amount of Rs. 18,000 was also deposited in the account of Shri Abbas but in the meantime the cheque was dishonored. That on account of this incident the workman was suspended from the services pending initiation of departmental enquiry against him. That thereafter the chief manager (disciplinary authority) of the bank issued a letter of charge dated 26-7-06 stating that the workman had allegedly temporarily misappropriated an amount of Rs.18,000 which had spoiled the image of the bank and the acts/omission were serious an amounts to :

- neglect of work, negligence in performing duties
- breach of any rule of business of the bank or instruction for the running of any department
- doing acts prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss, minor

misconducts under clause 7 (b), 7 (c) and gross misconduct under clause 5(j) respectively of the memorandum of settlement on disciplinary procedure dated 10-4-02 besides doing acts involving moral turpitude.

4. The workman was also called upon to submit his explanation failing which it was intimated that the domestic enquiry will be ordered against him. That on receipt of letter of charge the workman did not file reply to it in consultation with the union and its office bearers and the union assured him that no action would be taken against him since he has not committed anything wrong. That the Chief Manager by his letter dated 16-8-2008 intimated the workman that one Sudhir Pradhan is appointed as an Enquiry Officer in the matter. That during the enquiry proceedings the workman denied the charges however he was made to sign on some papers blindly thinking that the same was some proceeding sheet of the enquiry. That the workman was then told that the enquiry was concluded and by notice dated 28-10-2006 he was furnished with the enquiry report dated 5-10-2006 alleging that he had admitted his guilt and as such all charges have been proved. That the workman was then informed about the imposition of proposed punishment of discharge from service and was asked to submit his explanation within ten days. That the workman was given opportunity of personal hearing in this regard by the Chief Manager but he did not submit any explanation to it and thereafter the disciplinary authority ordered imposition of punishment of discharge from services of the bank with superannuation benefits and without disqualification for future employment as per clause 6(d) of the memorandum of settlement.

5. It is further stated that the workman had newly joined at the cash Section of the bank at San Jose de Areal branch and as he was not aware of the exact procedure and technicalities and by sheer inadvertence he accepted the amount from Shri Abbas even though the time to deposit is over. The workman has further stated that he deposited the said amount on the next day itself in the account of Shri Abbas and the said amount was kept in the bank itself and therefore there is no misappropriation of the amount. According to the workman the enquiry conducted against him was not fair and proper and was in the breach of principles of natural justice and that the punishment imposed upon is totally harsh and disproportionate to the alleged misconduct. That the workman therefore raised the dispute before the Asstt. Labour Commissioner at Vasco upon which notices were issued to the bank for conciliation but as the conciliation was not successful, the failure report was submitted to the Government. The workman has therefore prayed to declare that the enquiry was not fair and proper, was in breach of the principles of natural justice, the punishment of discharge was disproportionate and to quash and set it aside and to reinstate him in service with full back wages and continuity in service.

6. In the written statement it is the case of Party II that the workman was working as probationary clerk at San Jose de Areal Branch from 27-2-2006 till the date of his discharge from services; that pending the investigation and initiation of disciplinary proceedings in the matter, the competent authority in terms of order dated 15-6-06 placed the workman under suspension and subsequently a letter of charge dated 26-7-06 was issued to him stating that one customer of the bank by name Shri Mohammad Abbas having saving bank account no. 8152. That on 14-6-06 the workman was handling cash and he accepted cash of Rs. 18000 from said Shri Abbas for crediting the said amount to SB Account no. 8512 alongwith pay-in-slip and after receipt of the cash in token of having accepted the cash the workman issued the counter foil of pay in slip to Shri Abbas but failed to release the relevant pay in slip and to account for the said amount on 14-6-06 in the day book. That on 15-6-06 a cheque bearing no. 705769 dated 15-6-06 for Rs. 22,200 drawn by Shri Abbas in favour of third party was presented at the counter for payment but the same was returned unpaid as there was no sufficient balance in the account of Shri Abbas. That subsequently, Shri Abbas visited the branch and showed the counter foil issued to him and also lodged a complaint to the above effect and upon verification it was found that amount of Rs. 18,000 was not credited on 14-6-06. That on 15-6-06 the workman after altering the date on the pay in slip from 14-6-06 to 15-6-06 credited the amount of Rs. 18,000/- remitted by Shri Abbas to the bank on 14-6-06 and thus the workman temporarily misappropriated the banks funds of Rs. 18,000 for one day and this resulted in spoiling the image of the bank and therefore the workman was placed under suspension pending initiation of domestic enquiry.

7. The charge letter was issued to the workman by the competent authority of the bank but he did not file any reply. That the Enquiry Officer who was appointed initiated the enquiry proceedings and called upon the workman for explaining the charges upon which the workman admitted all the charges and therefore no further enquiry was continued. The Enquiry Officer submitted his report and thereafter the disciplinary authority called upon the workman to show cause upon the proposed punishment and also offered personal hearing and the workman though appeared before the disciplinary authority, failed to give his explanation and hence the punishment by way of discharge was imposed upon him. It is the contention of Party II that the enquiry was conducted in most fair and proper manner and by observing the principles of natural justice and once the workman admitted all the charges, there was no need for the bank to prove the charges otherwise by leading further evidence. That the appeal filed by the workman against the order of the disciplinary authority was rejected. In the rejoinder at the Exb.12 the workman has denied the contentions raised by the bank.

8. Following issues were framed by this court.

1. Whether the Party I proves that the enquiry conducted against him was not fair and proper?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence?
3. Whether Party I proves that the punishment imposed on him is illegal and unjustified?
4. What relief? What order?

9. Issue no. 1 and 2 were treated as preliminary issues and by order dated 6-10-10 issue no. 1 was answered in the negative and the issue no. 2 was answered in the positive.

10. In the course of evidence on issue no. 3 and issue no. 4 Party I examined himself by filing affidavit in evidence/additional affidavit in evidence at Exb. 29 and Exb. 30 respectively and he was then cross examined by Lnd. Adv. for Party II. Party I also examined Shri Mohammad Abbas Khan as his witness no. 2 and this witness was also cross-examined by other side. Party II examined one Shri Janardhan Prabhu as its witness who was cross-examined by Lnd. Adv. for Party I and thereafter the case of Party II was closed.

11. Heard Lnd. Adv. Shri R. D'sa for Party I and Lnd. Adv. Shri P. J. Kamat for Party II. Lnd Adv. for Party II also filed written submissions at Exb.43.

12. In his arguments Lnd. Adv. for party I submitted that the punishment imposed on the workman is not proportionate to the charges and according to him while imposing the punishment previous conduct of the workman ought to have been looked into. He also stated that since the workman deposited the said amount of Rs. 18,000 within a span of 24 hours, there is no pecuniary loss caused to the bank. According to him this court has powers U/s 11-A of The Act to reinstate the workman. In support of the above submissions he relied on the judgment in Bhojraj S/o. Narayan Parathe v/s. Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur 2011 (1) Mh. L.J. 726. in Rama Kant Mishra v/s State of Uttar Pradesh and Ors. (1982) 3 SCC 346 and in Ved Prakash Gupta v/s M/s. Delton Cable India (P) Ltd. (1984) 2 SCC 569.

13. On the other hand Lnd. Adv. for Party II by inviting my attention to the complaint filed by Mr. Mohammad Abbas (at page no. 16 in the enquiry file at Exb.E-I colly.) submitted that in terms of this complaint Shri Abbas has made it clear that he had deposited an amount of Rs. 18,000 in his SB Account no. 8512 on 14-6-2006 and when he came to the bank on 15-6-2006 to withdraw the money he found that his amount was not deposited. Thus according to him in the light of above complaint it becomes clear that the deposition of Shri Abbas before the court is an after thought. He also invited my attention to the foil and counter foil of the pay in slip (page 15 of Exb.E-I colly.) and stated that as

date on the counter foil is 14-6-06 where as on the foil the same is corrected as 15-6-06 which means that on 14-6-06 that counter foil of pay in slip was issued to Shri Abbas without actually depositing the amount in his account. Further by inviting my attention to the letter dated 16-6-06 addressed to the branch manager by Shri Abbas produced by the workman at Exb.33 dated 16-6-06, he stated that the story as deposed by Shri Abbas before this court by stating that he had come to the bank on 14-6-06 at 11:30 am with cash amount of Rs. 18,000 but the workman i.e. the cashier who upon counting found the amount to be Rs. 17,000 and as such Shri Abbas went back to his house and returned with an amount of Rs. 18,000 at around 3:10 p.m., is not found mentioned in Exb.33 which in short states that Shri Abbas had given cash of Rs. 18,000 to the workman to deposit in his SB Account at around 3:30 p.m. but as the branch was closed for the customer workman requested him to come on the next date however he requested the workman to accept the cash and credit the same to his SB Account which the workman did on the next date and therefore he has no complaint against the workman. He further stated that no sympathy can be shown in the matters relating to misappropriation in a financial institution and also that acquittal in criminal case cannot be considered while awarding punishment in the enquiry proceedings. He also relied upon various judgments to which reference would be made in the later part of the judgment.

14. I have gone through the records of the case and have duly considered the arguments advanced by both the parties on issue no. 3 and 4. My findings on issue no. 3 and 4 are as under :

Issue no. 3 In the negative.

Issue no. 4. As per Award.

REASONS

15. I have already mentioned above that preliminary issues no. 1 and 2 have been answered by holding that the enquiry conducted against the workman was fair and proper and that the charges of misconduct levelled against the workman are proved to the satisfaction of the Tribunal by acceptable evidence and therefore the issues which now arise for my consideration are the above mentioned issues no. 3 and 4 which are on the subject of quantum of punishment.

16. Interestingly, in the evidence adduced by the workman on the issue no. 3, there is nothing stating as to why the punishment imposed upon him is disproportionate to the charges proved against him. Thus, the arguments advanced by learned advocate for Party I that the punishment imposed is disproportionate because there was no pecuniary loss caused to the Party II and also because there is nothing to indicate that the past conduct of the workman was bad, cannot infact be considered.

17. Be that as it may, enquiry records at Exb. E-1 colly make it clear that Shri Abbas had complained to the bank by stating that he had deposited Rs. 18,000 in his SB Account no. 8512 on 14-6-06 at 11:30 am and when he came to the bank on 15-6-06 to withdraw the amount he found that the said sum of Rs. 18,000 was not deposited in his account. Therefore, in his complaint he had requested the bank to verify the matter and credit the amount to his account as early as possible. There is otherwise no dispute on the part of the workman that the aforesaid amount of 18,000 was handed over by Shri Abbas to him though according to him on 14-6-06 Shri Abbas came to San Jose de Areal branch of Party II at around 3:20 pm and requested him to deposit the amount of Rs. 18,000 in SB Ac No. 8512 and as the cash transaction for the day was over he requested Shri Abbas to deposit the said amount on the next day but due to earnest request of Shri Abbas and also due to his pleading to keep the amount in Party II itself and to credit the same in his account on the next day, with much hesitation and reluctance he acceded to the request of Shri Abbas.

18. It is pertinent to note that in his evidence Shri Abbas has come out with a totally different story by saying that on 14-6-06 he went to the Party II bank at around 11:30 am and handed over cash of Rs. 18,000 to the workman i.e. the cashier who upon counting the notes told him that the amount was only Rs. 17,000 upon which he too counted it and found the same as Rs. 17,000. He has stated that he then went home and asked his wife if she had taken Rs. 1000 from the said amount to which she agreed and as such he came back to the bank with total amount of Rs. 18,000 and reached there at 3:10 pm and requested the workman to accept the said deposit but the workman did not accede to his request on the grounds that cash transaction for that day was closed. He has stated that thereafter upon his request the workman took the said amount and told him that it would be deposited in his account on 15-6-06 and issued him a counter foil of the pay in slip dated 14-6-06. It may be mentioned here that the story of Shri Abbas coming to the bank with cash of Rs. 17,000; of the workman counting the said amount and finding it as Rs. 17,000; of the Shri Abbas then going back to his house and returning with cash of Rs. 18,000 by about 3:20 pm, is not stated by the workman. In case Shri Abbas had come to the bank on 14-6-06 at 11:30 am with the cash of Rs. 17,000; with the belief that the said amount was Rs. 18,000 and the workman upon counting it had found it as Rs. 17,000, nothing would prevent the workman from saying so in his evidence. Even for that matter, the workman has also conveniently avoided saying in his chief examination that upon pleading by Shri Abbas, to take the amount, he issued counter foil of the pay in slip dated 14-6-06 to Shri Abbas. That apart, in case the workman had told Shri Abbas that he would deposit the said amount in the account of Shri Abbas on the next date i.e. on 15-6-06 there was no reason for the workman to issue counter foil of the pay in slip with date as 14-6-06

(page no. 15 in Exb. E-1 colly) to Shri Abbas and this by itself makes the intentions of the workman clear. In this context, it has been rightly submitted by learned adv. for Party II that in case Shri Abbas had not verified the position about the deposit of the amount on the next date, the fact of non-deposit of the amount might not even have come to light. I also find force in the submissions of learned Adv. of Party II that Exb. 33 produced by the workman which is a letter dated 16-6-06 issued by him to the bank stating that he had given cash of Rs. 18,000 to the workman to deposit in his SB Ac no. 8512 at around 3:30 pm and since the branch was closed for customers workman requested to bring the cash the next day but as there was no safety in the house he appealed to the workman to accept the cash and credited the same to his SB account and that the same has been accordingly credited on the next date and therefore he has no complaint against the workman, does not mention in it that there was shortage of Rs. 1000 in the total amount which Shri Abbas had brought to the bank on 14-6-06 at 11:30 am. Thus, as rightly pointed out by learned Adv. for Party II it is apparent that the said letter at Exb. 33 was obtained from Shri Abbas much later only to cover up the misconduct on the part of the workman.

19. No doubt, it is clear from the foil of the pay in slip (page 15 in Exb. E-1 colly) that the said amount of Rs. 18000 was credited to the account of Shri Abbas on 15-6-06 and therefore as rightly pointed out by learned adv. for Party I the amount was credited to the account of Shri Abbas before the expiry of 24 hours, but this by itself would not mean that workman is entitled for reinstatement in service as no pecuniary loss was caused to the bank and thus the observations in the judgment in *Bhoraj* (supra) apply. I have gone through this judgment in which the petitioner was working as conductor and while on duty on 15-11-99 the inspection squad found that a group of 18 passengers was traveling without ticket. The inspector recovered the charges of the tickets with penalty from the travelers. A charge sheet was issued to the petitioner for misconduct and he was suspended from service for some period. The petitioner was held guilty in the enquiry followed by the order of dismissal. It was in this scenario held that the quantum of punishment is always measured and decided by applying the "principles of natural justice" and "doctrine of proportionality" or "doctrine of reasonableness" and that though the petitioner in this case had not issued tickets to 18 passengers, upon checking by the inspection squad, the said passengers paid all the amount of tickets along with the penalty charged thereon and therefore there was no pecuniary loss to the revenue of the respondent and moreover there was no charge of misappropriation of amount leading to financial gain to the petitioner. It may be mentioned here that the charge levelled against the workman in the instant case is of he temporarily misappropriating a sum of Rs. 18,000 and such act of omission in his part if proved would tantamount to neglect

of work, negligence in performing duties; breach of any rule of business of the bank or instruction for the running of any department; doing acts prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss; minor misconducts under clause 7 (b), 7 (c) and gross misconduct under Clause 5(g) respectively of the memorandum of settlement on disciplinary procedure dated 10-4-2002 applicable to the workman besides doing acts involving moral turpitude. In his arguments learned adv. for Party I submitted that there is nothing like "temporary misappropriation" and therefore the above terminology is apparently incorrect and therefore no charge of "temporary misappropriation" can be levied upon the workman. It may be mentioned here that in the order dated 6-10-10, passed while deciding the preliminary issues, this court has observed that as far as misappropriation is concerned, bank used the term "temporary" since the amount was deposited by the workman on the next day when it was pointed out to him that the complaint was filed by Shri Abbas. It is also observed that in practical, there cannot be a temporary misappropriation and that the misconduct with regard to misappropriation is complete with the intention of the workman of retaining the amount with him without making necessary entries in the register including the day book, cashiers register etc. It is therefore clear that the word "temporary" used in the charge is of no much significance as long as there is evidence to indicate that the workman had intentionally misappropriated the said amount of Rs. 18,000 may be for a period of short span.

20. Coming to the judgment in **Rama Kant Misra (supra)**, the appellant/workman in this case who was an office bearer of the workers union while in service for 14 years, one day, becoming enraged owing to some deductions made from his wages, used some indiscreet, indecent or threatening language to his superior officer. He was charge sheeted and was placed under suspension pending departmental enquiry. The charge was proved in the enquiry and the workman was dismissed from service. The Apex Court has held that the management has not shown that there was any blameworthy conduct of the appellant during the period of 14 years service he rendered prior to the date of misconduct and the misconduct consists of language indiscreet, improper or disclosing a threatening posture. It is observed that when it is said that language discloses a threatening posture it is the subjective conclusion of a person who hears the language because voice modulation of each person in the society differs and, indiscreet, improper, abusive language may show lack of culture but merely the use of such language on one occasion unconnected with subsequent positive action and not preceded by any blameworthy conduct cannot permit an extreme penalty of dismissal from service. Vis-a-vis the above observations, it is seen that in the case at hand the question was not of use of improper, indiscreet abusive language by the workman and unlike the above

case wherein the workman was working in the electricity supply administration, the workman in the instant case is the employee in a financial institution which runs on faith of the public in it and therefore the observations in the above judgment to the extent that the previous conduct of the workman needs to be looked into while awarding him the punishment for the misconduct, cannot be applied to the set of facts in the case on hand.

21. There is otherwise no dispute that under Section 11-A of the Act court has power to give appropriate relief in case of discharge or dismissal of workman if it is satisfied that the order of discharge or dismissal was not justified upon which it can set aside the said order and direct reinstatement of the workman on such terms and conditions if any, as it thinks fit. In the above context learned adv. for Party I relied upon the judgment in **Ved Prakash Gupta (supra)** in which case the substantial duty of the workman was that of a security inspector at the gate of the factory premises and in the course of his duty he abused one Durg Singh and S. K. Bhaga. The Hon'ble Apex Court observed that the charge levelled against the workman is not a serious one and it is not known how the charge even if proved would result in any much less, total loss or confidence of the management in the workman and thus ordered his reinstatement with full back wages and other benefits including continuity of service. It is therefore clear from above, that the workman in the above case was not performing a responsible duty as that of the workman in the instant case who was accountable to a financial institution and to the public and therefore the observations in the above judgment cannot be imported in the case at hand.

22. Nevertheless, learned adv. for Party II by relying on the judgment in **Mahindra and Mahindra Ltd., V/s N.B. Narawade 2005-I CLR 803** and in **U.P.S. R.T.C. V/s Subhash Chandra and Kailash Nath Gupta V/s Enquiry Officer 2003 II CLR 72** contended that in terms of the observations in these judgments the discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the labour court to reduce the punishment and in the absence of any such factor existing, the labour court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. Thus, it is clear that Section 11-A of the Act has to be pressed into services only in the situation mentioned above and considering the nature of duties which the workman herein was required to perform and the quantum of accountability which he had towards the bank, in my view the instant case is certainly not the one which would call for applicability of Section 11-A of The Act.

23. Learned adv. for Party II also relied on the judgment in **Divisional Controller, KSRTC V/s M.G. Vital Rao 2011 III CLR 1075** in which the workman who was the

employee of appellant corporation was subjected to disciplinary proceeding on the grounds that he stayed away from beyond his duty hours and committed theft from cash chest and thus after holding the enquiry he was imposed the punishment of dismissal from service. It is observed by the Hon'ble Apex Court that the disciplinary proceedings are not meant to really punish the guilty, but to keep the administrative machinery unsullied by getting rid of bad elements from the establishment. It is also observed that loss of confidence cannot be subjective, but there must be objective facts, which would lead to definite inference of apprehension in the mind of the employer about trustworthiness of the employee, which has to be alleged and proved. Learned adv. for Party II then relied on the judgment on the judgment in Janatha Bazar etc V/s The Secretary Sahakari Nourara Sangha etc. 2000 (87) FLR 483, wherein it is observed that in the case of a proved act of misappropriation a workman cannot be rewarded with reinstatement in service and in such case there is no question of considering the past record.

24. Learned advocate for Party II next relied upon the judgment in U.P. S. R. T. Corporation V/s Vinod Kumar 2008 1 CLR 847 wherein it is held by the Hon'ble Apex Court that when an employee is found guilty of misappropriation of funds, the court should be reluctant to reduce the punishment on misplaced sympathy of a workman.

25. Thus, from the observations in the above judicial pronouncements, the only conclusion that can be drawn is that the loss of confidence is the primary factor and not the amount of money misappropriated or the time span of its misappropriation and that the sympathy or generosity cannot be a factor when an employee is found misappropriating the funds of the institution. The punishment imposed on the workman in the instant case is discharge from the services of the bank with superannuation benefits and without disqualification for future employment. Considering the nature of misconduct committed by the workman which is of misappropriation of money and the resultant loss of confidence in him by the bank, the punishment imposed, cannot be said to be disproportionate to the proved misconduct. Thus, the workman herein is not fit to be retained in the services of the bank where highest level of integrity and honesty is expected from the employees.

26. As regards the contention of learned adv. for Party I that the workman was tried for the offence punishable under Section 409 of the Indian Penal Code but by judgment dated 24-11-09 in Criminal Case No. 274/S/2006/C he was acquitted for want of evidence and therefore there was no criminal misappropriation proved against the workman, it has been rightly pointed out by the learned adv. for Party II by relying on the judgment in Divisional Controller, KSRTC (supra), that Criminal proceedings and the disciplinary proceedings are independent of each other and even if a person stood acquitted by a Criminal Court, domestic enquiry can be held against him, the reason being that the

standard of proof required in a criminal case and a domestic enquiry is all together different. This being the position of law, Party I cannot be heard to say that the charge of misappropriation levelled against him does not stand as he has been acquitted in the criminal case filed against him on the same subject matter.

27. At any rate since discussion supra, makes it clear that Party I/workman has totally failed to prove that the punishment imposed on him is illegal and unjustified, I pass the following:

ORDER

1. It is hereby held that the action of the management of the Corporation Bank, Goa in dismissing Shri Kushali Kusta Gaonkar, Clerk, from employment w.e.f. 16-11-06, is legal and justified.
2. The workman Shri Kushali Kusta Gaonkar is therefore not entitled to any relief.
3. No order as to costs.

Inform the Government accordingly.

B. K. THAIY, Presiding Officer

Place: Panaji.

Dated: 4-4-2012

नई दिल्ली, 15 जून, 2012

का.आ. 2330.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, धनबाद के पंचाट (संदर्भ संख्या 84/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12011/74/2005-आई आर (बी-II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2330.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2005) of the Central Government Industrial Tribunal Court No.1, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 31-05-2012.

[No. L-12011/74/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 1, DHANBAD

In the matter of a reference U/s. 10 (1) (d) (2A) of the Industrial Disputes Act, 1947.

REFERENCE No. 84 of 2005

Parties:

Employers in relation to the management of Punjab National Bank

AND

Their Workmen

PRESENT: Shri H.M. SINGH, Presiding Officer**APPEARANCES:**

For the Employers : None

For the Workman : Shri B. Prasad, Authorised Representative

State : Bihar

Industry : Bank

Dated, the 18-5-2012

ORDER

By Order No. L-12011/74/2005-IR (B-II) dated 8-11-2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Punjab National Bank, Patna in terminating the services of Shri Rajesh Kumar w.e.f. 14-1-2004 is legal and justified? If not, to what relief Shri Rajesh Kumar is entitled?”

2. The case of the concerned workman is that he was orally appointed by the management of Punjab National Bank to discharge the duties of a peon at the Extension Counter office of Bela Industrial Estate, Muzaffarpur. After his appointment, he used to discharge his duties from 9.30 AM to 5.30 PM and sometimes even beyond that as per requirement. He was performing the duties of cleaning the branch premises, tables, furniture etc, taking out lodgers/ registers from the almirah, placing the same on tables, counters and vice-versa; carrying out token book from cash department to Accounts Deptt and vice-versa; posting of mails to post office; distribution of bank's dak through dak delivery register; opening and closing of bank's gate; taking out cash box from strong room vouchers whenever required; stitching of currency notes and vouchers whenever required bringing tee, betel, etc. from the nearby shop for members of staff and customers of the bank etc. Initially he was being paid wages on weekly basis @ Rs. 750 per month. He used to discharge the duties as per the instruction of the Manager and other officers of the branch and the payment of wages was made to the workman through debit vouchers. The workman was being paid his wages in his own name and he was paid wages upto October, 2003 in his own name. After October, 2003, the workman was being forced to take payment in different names from November, 2003 to which he did not agree. As he refused to take payment in different names, he was allowed to work upto 14-1-2004 and he was stopped from work. After termination, the concerned workman approached with the management for his reinstatement and regularisation of his services but of no avail. His request for payment of wages for the period 1-11-03 to 14-1-04 was also not considered. He worked for more than 240 days in

a year. The termination of the workman is covered under sec.2 (oo) of the I.D. Act, 1947. He was neither given any notice nor notice pay nor any retrenchment compensation prior to his termination. Thereafter an industrial dispute was raised before the A.L.C. (C), Patna, which ended in failure and ultimately the dispute has been referred to this Tribunal for adjudication. The action of the management in terminating the services of the workman is neither legal nor justified.

It has been prayed that this Hon'ble Tribunal be pleased to pass an award in favour of the workman by directing the management to reinstate the concerned workman with full back wages.

3. The case of the management is that the service conditions of the workman staff in the banking industry are governed by the provisions of Sastry Award, Desai Award and various Bipartite Settlements and in terms of Para 16.9 of the Bipartite Settlements persons who are engaged to do casual work are excluded from the operation of the award. It has been submitted that Extension Counter attached to BO Bela Industrial Estate, Muzaffarpur was opened on 4-3-2002 and the casual work of sweeping/ cleaning the branch premises was used to be got done from the casual labours against payments of necessary amount, purely by way of stop gap arrangement. It has also been submitted that the recruitment of PTS in the bank is required to be done as per the rule of the bank and one of eligibility criteria prescribed for such recruitment is that a candidate should not be more than 4th class pass. So Shri Rajesh Kumar cannot claim appointment/recruitment in the bank as PTS de hors the rules.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award in favour of the management.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The concerned workman produced WW-1 (Rajesh Kumar) and proved documents as Exts. W-1 and W-2 series. Management has not produced any oral evidence.

6. Main argument advanced on behalf of the concerned workman is that he was doing the work with the management at Bela Industrial Estate of Punjab National Bank from 20-8-01 and he worked from 20-8-01 to 14-1-2004 regularly from 9.30 AM to 5.30 PM. He was doing the work of cleaning and the job of peon. There is no permanent peon in the branch. He was getting wages of Rs. 750 per month through voucher. He has worked more than two years and discharged the duties of the management. He was not given any notice of retrenchment compensation before termination.

7. In this respect the management's representative argued that the extension counter of Bela Industrial Estate branch of the bank started on 4-3-2002 and the concerned workman was engaged for cleaning/sweeping of the premises of the branch and it was temporary capacity in

the stop gap arrangement. There is no system of oral appointment in the Bank.

8. The concerned workman submitted xerox copy of payment voucher (Ext.W-1). This bears the signature of the concerned workman which shows that he was working with the management. Ext.W-2 photo copy of the letter dated 11-6-02 by which the Manager, Bela I. E., Muzaffarpur recommended for appointment of the concerned workman as Part Time Sweeper.

As per evidence of WW-1, Rajesh Kumar, he worked from 20-8-01 to 14-1-2004 and he worked for more than 240 days in a year.

9. The management's representative argued that he cannot be given employment as part time sweeper. But document, Ext. W-1, filed by the concerned workman shows that he worked with the management and was doing the work of sweeper/peon and getting payment of this work from the branch. It is continuous nature of job.

10. In this respect on behalf of the concerned workman 2011 Lab. I. C. 2799 has been referred in which the Hon'ble Supreme Court laid down ---

"Civil Appeal No. 3190 of 2011 (arising out of S.L.P. No. 1287 of 2009) dated 11-4-2011.

Devinder Singh V. Municipal Council Samaur.

(A) Industrial Disputes Act (14 of 1947).

S. 2(s) Workman--- Part-time employee, contractual employee, temporary or casual employee-All are workman.

The source of employment the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2 (s) of the Act. The definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2 (s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman (Paras 13, 14)

(B) Industrial Disputes Act (14 of 1947), Ss. 25-F, 11-

A Constitution of India, Art. once by writ court ---
Workman Engaged on contract basis repeatedly ---
Retrenched in violation of provisions of S. 25-F Award directing his reinstatement Award not found to be suffering from jurisdictional error or error of law apparent on case of record Writ Court by assuming that his initial appointment/engagement was contrary to law and that it would not be in public interest to approve award of reinstatement after long lapse of time Setting aside award of reinstatement Order passed is legally untenable
Facts that workman was appointed without advertisement because of ban on recruitment imposed by Government And workman cannot be blamed for any delay in disposal

of case by Labour Court or of writ petition by High Court Ignored while passing order.

C.W.P. No. 11111 of 2006, D/-19-11-2008 (P & H).
Reversed. (Paras 22, 25, 26) Cases Referred: Chronologic
Paras :

AIR 2010 SC 1116 : 2010 AIR SCW 1357 : 2010 Lab IC 1433 :

2010 (2) AIR Kar R 163.

2010 AIR SCW 6387 : 2011 (1) AIR Bom R 130.

(2010) 5 SCC 497

AIR 2008 SC (Supp.) 342 : 2008 AIR SCW 223 : 2008 (1) ALJ 790

AIR 2008 SC (Supp.) 1334 : 2008 AIR SCW 1474 : 2008 LAB IC 1375 : 2008 (3) ALJ 533.

AIR 2007 SC 528 : 2007 AIR SCW 70 : 2007 Lab IC 987

2007 AIR SCW 2357 : 2007 Lab IC 1955 : 2007 (3) AIR

Kar R 433 : 2007 (2) AIR Jhar R 908.

2007 AIR SCW 7305 : 2008 (1) ALJ 245.

AIR 2006 SC 1806 : 2006 AIR SCW 1991 : 2006 (3)

AIR Kar R 320.

AIR 2003 SC 1872 : 2003 AIR SCW 1340 : 2003 Lab IC 1449 : 2003 AIR Jhr HC R 548.

AIR 2003 SC 3044 : 2003 AIR SCW 1372 : 2003 All LJ 2057 :

AIR 2001 SC 479 : 2001 AIR SCW 77 : 2001 Lab I. C. 475 :

AIR 1993 SC 1388 : 1993 Lab IC 428 :

(1990) 3 SCC 682

AIR 1984 SC 500 : 1983 Lab IC 1865 : AIR 1982 SC 854 :

1982 Lab IC 8011 : AIR 1981 SC 422 : 1980 Lab IC 1292 :

AIR 1981 SC 1253 : 1981 Lab IC 806 : AIR 1980 SC 1219 :

1980 Lab IC 687 : AIR 1976 SC 332 : AIR 1976 SC 1111 :

1976 Lab IC 769 : AIR 1974 SC 37 : 1974 Lab IC 133 :

AIR 1964 SC 477 : AIR 1964 SC 1617 : AIR 1961 SC 644 :

AIR 1960 SC 610.

11. Considering the above facts and law stated above. I hold that action of the management of Punjab National Bank, Patna in terminating the services of Shri Rajesh Kumar w.e.f 14-1-2004 is not legal and justified. So, he is entitled to be reinstated in service of the Bank as a Peon with 25% back wages and regularisation as Peon with effect from the date of his termination. The management is directed to implement the award within 30 days from the date of publication of the Award.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2331.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/13/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-06-2012 को प्राप्त हुआ था।

[सं. एल-12012/119/1999-आई आर (बी-1)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2331.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/13/1999) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Maharashtra and their workmen, which was received by the Central Government on 04-06-2012.

[No. L-12012/119/1999-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/13/1999

Date: 31-05-2012.

Party No. 1

The Asstt. General Manager,
Bank of Maharashtra, Regional Office,
Mahabank Building, Abhyankar Road,
Sitabuldi, Nagpur- 440012.

Versus

Party No. 2

Shri Wasudeo S/o Pandurang Sherekar,
R/o. Plot No. 117, Nandanwan Layout,
Nagpur.

AWARD

(Dated: 31st May, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of Maharashtra and their workman, Shri Wasudeo Sherekar, for adjudication, as per letter No. L-12012/119/99-IR (B-II) dated 29-09-1999, with the following schedule:

"Whether the action of the Chief Manager, Bank of Maharashtra, Sitabuldi, Nagpur in dismissal of Shri. Wasudeo Pandurang Sherekar, Ex-staff w.e.f. 24-01-1998 is legal & justified? If not, to what relief the said workman entitled and from what date?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Wasudeo Sherekar, ("the workman" in short), filed the statement of claim and the management of the Bank of Maharashtra ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that the Bank of Maharashtra, being a nationalized bank is an industry as defined under the Act and the service conditions of the employees of the Bank are governed by the provisions of Sastri Award, Desai Award and different Bi-partite settlements signed between the management and unions and such Bi-partite settlements have set and prescribed procedure and Rules for taking disciplinary action against the award staff employees working in the Bank and he joined the service of the Bank in the sub-ordinate cadre and due to achieving the qualification and his dedication in work, he was promoted to the clerical cadre in the year 1993 and was posted as a clerk at Amangaon-Deoli branch in Nagpur District. It is further pleaded by the workman that specific procedure is there for depositing money in the account of the branch by the account holders and as per the rules framed by the Bank, an account holder is supposed to obtain signature and number from the officer working in the branch and after scrolling the deposit voucher only, he is supposed to deposit the amount himself with the cashier of the branch, who in his turn is to receive the cash as per the voucher and to put specific stamp of cash received on the respective voucher with his full signature on the same and any deposit made by any customer of the Bank otherwise shall be unauthorized and will not construe to be deposit made in the Bank and the above procedure has been well set out by the Bank in its Rules and is notified on the pass books supplied to the customers by the bank and on notice board and while he was working as a clerk at Amangaon - Deoli branch, charge sheet dated 21-02-1997 was served on him and the charges levelled against him were vague and along with the charge sheet, necessary documents, on which the charge sheet was founded were not given to him and before submission of the charge sheet, show cause notice calling for his explanation was not issued, which clearly manifests that disciplinary authority was predetermined in issuing the charge sheet much less punish him before the enquiry and such approach was unjustified and illegal and on that ground only, the entire enquiry proceedings are liable to be declared as unfair and unjustified and for identical allegations, nine charges were levelled against him, under clauses 19.5 (j) and 19.5 (d) of the Bi-partite settlement and the same was done with the ulterior motive to aggravate

the gravity of the charge sheet and to justify the action of suspending him and with malafide intention to punish him and all the allegations levelled in the charge sheet fell outside the scope and ambit of clauses 19.5(j) and 19.5 (d) of the Bi-partite settlement and the enquiry officer and presenting officer appointed by the authority were provided with a common room in the premises of the bank and it can be safely said that both were working together behind his back to prosecute him by hook or crook and therefore, the enquiry officer did not apply his independent mind much less judicious mind and acted against the principles of natural justice and the findings given by the enquiry officer are nothing but a documentation perversity and the enquiry officer submitted his report based on conjecture and surmises and gave undue weightage to the witnesses produced on behalf of the Bank and the witnesses were tutored witnesses and the enquiry officer gave the findings in a most casual and mechanical manner and the findings are perverse and management miserably failed to establish any guilt against him in the enquiry and the enquiry officer just completed the formalities of enquiry declaring the charges having proved and non-application of mind, therefore, writ large on the face of the findings. It is also pleaded by the workman that the enquiry officer in his report referred and relied upon certain communications purported to have been given by him and the said communications were obtained by the higher executives of the bank under threat of police actions and of dire consequences and the said communications do not reflect the truth and the enquiry officer ought not to have relied upon such communications to arrive at his findings and the disciplinary authority also did not consider the sanctity of evidence recorded and just reiterated its desire of punishing him with the highest punishment of dismissal without notice and his past unblemished record was not considered by the disciplinary authority, before imposition of the punishment and the punishment of dismissal from service w.e.f. 24-01-1998 imposed against him is shockingly disproportionate, unjustified and illegal. The further case of the workman is that the appeal preferred by him before the appellate authority was dismissed in a mechanical manner, without consideration of the points of defence and as such, the punishment is liable to be set aside and in many cases of similar nature, the management of the Bank had shown leniency and he has been singled out with differential treatment in awarding punishment and the enquiry conducted by the enquiry officer was mechanical in nature and with bias mind.

The workman has prayed to set aside the order of punishment dated 24-01-1998 and to reinstate him in services of the bank with full back wages and consequential benefits.

3. The Party no.1 in the written statement has pleaded inter-alia that the workman, while working as a clerk in Amgaon Deoli Branch was served with the charge sheet

dated 21-02-1997 under clauses 19.5 (j) and 19.5 (d) for commission of the acts like suppression/concealment of material information, fabrication of false evidence, misappropriation, altering/tempering of branch records, embezzlement of Bank's funds, falsification of accounts and causing damage to the property of bank and a departmental enquiry was ordered and accordingly, the enquiry officer submitted his findings on 29-09-1997, holding seven of the charges out of nine levelled against the workman to have been proved and a personal hearing was extended to the workman by the disciplinary authority on 10-01-1998, before imposing the punishment and after taking into consideration the submission of the workman, the punishment of "Dismissal without notice" was imposed on the workman on 24-01-1998 and being aggrieved by the order of the disciplinary authority, the workman filed an appeal against the order, before the appellate authority and the appellate authority also extended a personal hearing to the workman on 04-04-1998 and after taking into consideration the submissions made by the workman, the appellate authority confirmed the order of the disciplinary authority vide order dated 25-06-1998. The further case of the party no.1 is that the service carrier of the workman was not unblemished and he was served with a charge sheet and punishment of stoppage of one increment with cumulative effect was imposed against him vide order dated 08-07-1996 and though he was posted as a clerk at Amgaon Deoli branch, at times, he was working as the cashier during the absence of the permanent cashier and the charges levelled against the workman were very specific and all the documents were provided to the workman alongwith the charge sheet and the workman had acknowledged the receipt of the documents and a show cause notice dated 26-10-1996 was issued against the workman, before issuance of the charge sheet and the procedure as stipulated in the Bi-partite settlement was scrupulously followed and there was no breach of natural justice in conducting the enquiry and the contention of the workman that the disciplinary authority was predetermined to issue the charge sheet is totally baseless and the nine charges were levelled on nine different allegations and the enquiry officer considered the evidence adduced by the parties during the enquiry before arriving at the findings and management had clearly established the guilt of the workman through the witnesses and commission of serious and grave misconducts committed by the workman diminish the confidence of the public in the bank and the continuance of the workman would be injurious to the interest of the bank and society at large and as such, the workman was put under suspension and the communication mentioned by the workman are letters given by him in his own handwriting to the bank for having misappropriated the money and offer for willingness to deposit the money in the customer's account, from which misappropriation was committed and the enquiry officer did not come to the conclusion based only on the

communication given by the workman and he took into consideration the other corroborative evidence and depositions of the witnesses before arriving at his findings and in view of the seriousness of the charges, the punishment of dismissal without notice is just and proper and the workman was not singled out with differential treatment in awarding punishment and the enquiry was conducted in a fair manner and all opportunities to defend the case were given to the workman and the workman is not entitled to any relief.

4. In his rejoinder, the workman has reiterated the facts mentioned in the statement of claim and pleaded that the order dated 08-07-1996 was passed without conducting any departmental enquiry and as such, the same is illegal.

5. It is necessary to mention here that on 25-09-2000, award was passed by this Tribunal with a direction to reinstate the workman in service with continuity and full back wages and consequential benefits, holding the departmental enquiry to be unfair and partial and not in accordance with the principles of natural justice.

6. Being aggrieved by the award dated 25-09-2000, the party no. 1 filed writ petition no. 4218/2000, before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur challenging the award and the Hon'ble High Court by order dated 5th and 13th December, 2011 was pleased to pass the following orders,

5. "Much has been said by the Central Government Industrial Tribunal about the use of the words "for causing misappropriation", etc. in the charges levelled against the respondent no. 2. The Central Government Industrial Tribunal made a great issue about the use of the words "causing misappropriation" and "embezzlement of funds" as used in different charges levelled against the respondent no. 2. The Central Government Industrial Tribunal failed to consider the enquiry report in the right perspective, wherein a findings was recorded by the enquiry officer that the respondent no. 2 had collected certain amounts from its customers for depositing the same in the bank but, had not deposited the same and have retained the amounts with himself until the customers approached the Bank for withdrawal of the amounts. Without considering the enquiry report in its entirety, the Central Government Industrial Tribunal observed that it was strange that the enquiry officer could not ascertain the exact amount, which was allegedly misappropriated or embezzled by the respondent no. 2. The letters of the account holders are erroneously considered by the Central Government Industrial Tribunal for holding that the amount handed over by the account holders to the respondent no. 2 were not misappropriated by the respondent no. 2 and the account holder had no complaint against the Bank. Certain trivial matters were mentioned by the Central

Government Industrial Tribunal in the impugned award for holding that the respondent no. 2 was not guilty of the charges levelled against him. Though the enquiry officer had mentioned the relevant evidence on the basis of which, each charge was proved, the Central Government Industrial Tribunal erroneously observed that the enquiry officer had not mentioned the relevant evidence on the basis of which the charge was proved. There is no reason recorded by the Central Government Industrial Tribunal to hold that the domestic enquiry conducted against the respondent no. 2 was not fair and impartial though a finding to this effect has been recorded by the Central Government Industrial Tribunal. On an overall reading of the impugned award dated 25-09-2000, it is clear that the same has been passed by the Central Government Industrial Tribunal without application of mind and for reasons, which are unsustainable in law. The impugned dated 25-09-2000 is unsustainable and is liable to be set aside.

6. Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned award passed by the Central Government Industrial Tribunal passed on 25-09-2000 is quashed and set aside. The matter is remanded to the Central Government Industrial Tribunal for considering the reference afresh on merits and in accordance with law. Since the respondent has already attained the age of superannuation, during the pendency of the writ petition, the Central Government Industrial Tribunal is directed to decide the reference as early as possible and positively within a period of six months from the date of appearance of the parties before the Tribunal. The parties undertake to appear before the Tribunal on 02-01-2012 so that issuance of notices to the parties could be dispense with.

Rule is made absolute in the aforesaid terms with no order as to cost."

7. In view of the direction of the Hon'ble Court as mentioned above, the workman appeared in the case through his advocate on 02-01-2012. However, the management of Bank of Maharashtra made their appearance through their advocate on 03-02-2012.

8. As this is a case of dismissal of the workman from service after holding a departmental enquiry, the validity of the departmental enquiry was taken up for consideration as a preliminary issue and as per order dated 09-04-2012, the departmental enquiry was held to be legal, proper and in accordance with the principles of natural justice.

9. It is necessary to mention here that the case was fixed to 29-03-2012, for hearing of argument on the validity of the departmental enquiry, but the management remained absent and none appeared on behalf of the management to

advance argument and as such, argument was heard in full from the side of the workman and the case was posted for order on the validity of the departmental enquiry.

It is also necessary to mention here that the case was fixed to 03-05-2012 for hearing of argument on the questions of perversity of the findings and the proportionality of punishment. However, on that date, neither the management nor anybody else on its behalf appeared to advance argument. No step was also taken by the management. So order was passed to proceed *ex parte* against the management and argument was heard from the side of the workman and the reference was fixed for award.

10. At the time of argument, it was submitted by the learned advocate for the workman that on perusal of the charge sheet submitted against the workman, it can be found that charge has been levelled against him under clause 19.2 of Bi-partite settlement, 1966, but clause 19.2 is not a misconduct or a charge and the enquiry officer has also mentioned about clause 19.2 of Bi-partite Settlement in his findings and as such, the findings are perverse. It was further submitted by the learned advocate for the workman that the charge under clause 19.5 (J) of the Bi-partite Settlement is a general charge and no specific charge was levelled against the workman and the entire enquiry was a mere formality and the enquiry officer has not assigned any reason in support of the findings and therefore, the findings are perverse. It was further submitted by the learned advocate for the workman that the workman was not a cashier and there was insufficient evidence on the record of the enquiry to hold the charges to have been proved against the workman and it is clear that the workman had taken hand loans from some of the customers and taking of hand loans does not amount to any misconduct and as such, the punishment imposed against the workman is not proper and too excessive and the interference of the Tribunal under Section 11-A of the Act is necessary. Lastly, it was submitted by the learned advocate for the workman that alternatively, the punishment of dismissal from services be modified to one of compulsory retirement, in the interest of natural justice and taking into consideration the length of service rendered by the workman, so that he will be entitled to retirement benefit.

11. Perused the charge sheet submitted against the workman. Though in the charge sheet, it has been mentioned that the acts committed by the workman amounted to commission of an offence involving moral turpitude as per the meaning of clause 19.2 of the Bi-partite Settlement, charge has not been levelled against the workman under clause 19.2 of the Bi-partite Settlement. Specific charge under clause 19.5 (j) and 19.5 (d) of the Bi-partite Settlement were levelled against the workman. Likewise, on perusal of the enquiry report submitted by the enquiry officer, it is found that though the enquiry officer has referred about clause 19.2, his findings are regarding clauses 19.5 (j) and 19.5 (s) of the Bi-

partite Settlement. Hence, I find no force in the submission made by the learned advocate for the workman on that score.

12. The learned advocate for the workman made submissions regarding insufficiency of evidence and the findings to be perverse, on the ground that no reason has been assigned by the enquiry officer in support of the findings and that the enquiry officer placed much reliance on the hearsay evidence of the Sarpanch, who was examined as a witness by the management in the enquiry and the workman had borrowed money from some customers and as such, the enquiry officer should not have held the charges to have been proved against the workman, as borrowing money is not a misconduct.

13. Before taking into consideration the merit of the submissions made by the learned advocate for the workman, I think it proper to mention about the settled principles regarding the jurisdiction of the Tribunal to interfere with the findings and punishment in disciplinary matters and the standard of proof required in a disciplinary proceeding.

It is well settled that in a disciplinary proceeding, the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt like in a criminal trial and where there are some relevant materials which the authority has accepted and which materials may reasonably support the conclusion that the officer is guilty, it is not the function of the Tribunal to review the materials and if the enquiry has been properly held, the question of adequacy or reliability of evidence cannot be canvassed before the Tribunal.

It is also well settled that the jurisdiction of the Tribunal to interfere with the disciplinary matters for punishment cannot be equated with an appellate jurisdiction and the Tribunal cannot interfere with the findings of the enquiry officer or competent authority, where they are not arbitrary or utterly perverse and the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or rules made under the provision of Article 309 of the Constitution and if there has been an enquiry consistent with the Rules and in accordance with the principles of natural justice, what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of competent authority and if the penalty can be lawfully imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority.

14. Now, the present case in hand is to be considered with the touch stone of the settled principles as mentioned above.

On perusal of the record of the departmental enquiry, it is found that management examined as many as 11 witnesses including the accounts holders, from whom the workman had received different amounts to deposit the same in their respective accounts and though the workman

issued counter foils in support of the said deposits, did not deposit the same with the Bank. Management also produced documents including the admission of the workman, (ME 18, ME 19, ME 20 and ME 21) of having received different amounts from the depositors and not depositing the amounts in the respective accounts of the account holders and misappropriating the amount. It is found that the enquiry officer has dealt with the charges chronologically and has assessed the evidence on record of the departmental enquiry in a rational manner in arriving at the findings. He has also assigned cogent reasons in support of the findings. Hence, the findings of the enquiry officer cannot be said to be perverse. The enquiry officer also considered the plea of the workman about taking the money as hand loans from the depositors, which plea was taken by him only in his defence statement and rightly rejected the plea by assigning cogent and plausible reasons in support of the same. Hence, there is no force in the contention raised by the learned advocate for the workman in that regard.

15. So far the proportionality of the punishment is concerned, it is found that serious misconducts including misappropriation of money have been proved against the workman in a properly conducted departmental enquiry.

The workman as a Bank officer held a position of trust, where honesty and integrity are inbuilt requirement of functioning of the Bank. So it would not be proper to deal with the matter leniently. The workman committed the misconduct for his personal ends and against the interest of the Bank and the depositors. Hence, the punishment of dismissal from services imposed against the workman cannot be said to be disproportionate to the proved grave misconducts or shockingly disproportionate.

So far the alternative submission made by the learned advocate for the workman to convert the punishment of dismissal to one of compulsory retirement is concerned, it is to be mentioned here that the scope of judicial review in such a case is very limited. Sympathy or generosity as a factor is impermissible. Loss of confidence is the primary factor. In the instant case, the workman was found guilty of misappropriating the Bank's funds. There was nothing wrong in the Bank losing confidence or faith in such an employee and awarding punishment of dismissal. In such a case, there is no place for generosity or misplaced sympathy and to interfere with the quantum of punishment imposed by the Disciplinary Authority. Hence, it is ordered:—

ORDER

The action of the Chief Manager, Bank of Maharashtra, Sitabuldi, Nagpur in dismissal of Shri Wasudeo Pandurang Sherekar, Ex-staff w.e.f. 24-01-1998 is legal & justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2332. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी 1/71/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-06-2012 को प्राप्त हुआ था।

[सं. एल 12012/82/2004 आई आर (बी-11) |
श्रीरा राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2332.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/71/2004) of the Central Government Industrial Tribunal-cum-Labour Court I, Mumbai now as shown in the Annexure, in the Industrial Dispute between employers in relation to the management of Bank of India workman, which was received by the Central Government on 13-06-2012.

[No. 1-12012/82/2004]

S. H. E.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present

JUSTICE G. S. SARKAR, Presiding Officer

REFERENCE No. CGIT-1/71 OF 2004

Parties: Employers in relation to the management of Bank of India

And

Their workman (Smt. P.D. Pai)

Appearances:

For the Management : Mr. Lancy D'Souza,
Management Representative.

For the workman : Mr. M.B. Anchan, Adv.

State : Maharashtra

Mumbai, dated the 08th day of September, 2011.

AWARD PART-I

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

Whether the action of the management of Bank of India in terminating the services of Smt. Priya Dinesh Pai, Special Assistant, by way of discharge from services of the bank with superannuating benefits

vide punishment order dated 23-5-2001 is justified, valid and proportionate to the alleged charges of misconduct? If not, what relief the workman is entitled to and from which date and what other directions are necessary in the matter?

The facts in brief are that the workman joined the first Party as a Typist in 1973. By order dt.21-7-2000 the workman was suspended on the allegation that she opened two current accounts nos.662 and 647 in the Syndicate Bank, Mahim Branch, Mumbai in the name of M/s.Akshar Computers, Mumbai and M/s.Chinha Graphics, Mumbai respectively as proprietors of the said firms without obtaining prior permission of the First Party and various transactions were carried out through the said accounts. An enquiry was instituted against the workman by order dt.12-9-2000. Vrinda Vaidya was appointed Enquiry Officer. A preliminary enquiry was held on 22-12-2000. The workman partly admitted the charge. The Enquiry Officer submitted her report and on the basis of admission of the workman it was held that the workman engaged herself in trade or as proprietor of M/s.Akshar Computers a firm in the name she undertook data entry and/or data processing job of M/s. New India Assurance Company. She credited the job work payment from New India Assurance to the credit of her current account no.662 opened with Syndicate Bank, Mahim as sole proprietor of the said firm M/s.Akshar Computers. By order dt.15-5-2001 Assistant General Manager, Mumbai, North Region (Disciplinary Authority) proposed the punishment in terms of clause 21(4)(b) of the bipartite settlement and by order dt.23-5-2001 passed by the Disciplinary Authority the workman was discharged from the service. The dispute has been referred to this Tribunal to decide whether the action of the first party is justified and whether the punishment inflicted on the workman is proportionate to the charges of misconduct.

According to the statement of claim filed by the workman he was not given an opportunity to submit her explanation to the alleged misconduct before passing orders of departmental enquiry. The first party misguided the workman by suggesting that the enquiry was a formality. No proper enquiry was conducted as after preliminary enquiry only the Enquiry Officer came to the conclusion that the misconduct was partly proved.

According to the written statement there is no provision for giving an opportunity to the workman to submit explanation to the charge sheet before ordering the domestic enquiry. Neither the Enquiry Officer nor the Competent Authority at any point of time informed the workman that the departmental enquiry was a mere formality. Since the workman admitted the misconduct there was no necessity for the first party to lead any oral evidence. It has been stated in the written statement that the

procedure adopted by the Enquiry Officer is legal and is in accordance with principles of natural justice.

The workman has filed rejoinder.

Following issues have been framed.

- (1) Whether the workman proves that the enquiry conducted against her is not fair and proper?
- (2) Whether the workman proves that the findings of the Enquiry Officer are not legal?
- (3) Whether the workman proves that the action of the Bank in terminating her services by way of discharge with superannuation benefits vide Punishment Order dt.23rd May, 2001 is not justified, valid and proportionate to the charges of misconduct?
- (4) What reliefs?

Issues nos. 1 and 2 are being decided as preliminary issues.

Heard Shri Lancy D'Souza learned counsel for the first party and Shri Anchan learned counsel for the second party workman.

Issues Nos. 1 and 2:

According to the note sheet dt.22-12-2000 Ex-W-10 the workman admitted that she signed as proprietor of M/s.Akshar Computers, Mumbai on the account opening form but she stated that she put her signatures and did transactions in the above account on the advice of her husband. The defence representative submitted a brief containing arguments Ex.W-14 before the Enquiry Officer wherein it was stated at para no.3 that the workman did sign the account opening form as a proprietor for the account opened in the name of M/s.Akshar Computers and made transactions in it but that she did at the instance of her husband.

To do the act on the advice or at the instance of her husband cannot save the workman from the consequences of such act.

In view of clear admission of the workman no further evidence was required. There can be no better evidence against the workman than her own admission. On the basis of her own admission the Enquiry Officer has rightly found the workman guilty of engaging herself in trade or business as sole proprietor of M/s.Akshar Computers while in service of the first party.

In view of the above discussion it becomes clear that the enquiry conducted against the workman is fair and proper and there is absolutely no basis to hold that the findings of the Enquiry Officer are not legal or are perverse.

Issue Nos. 1 and 2 are, therefore, decided against the second party workman.

The reference be fixed for hearing on remaining issues on 15th September, 2011.

JUSTICE G. S. SARRAF, Presiding Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present :

JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE No. CGIT-1/71 OF 2004

Parties : Employers in relation to the management of Bank of India

And

Their workman (Smt. P. D. Pai)

Appearances:

For the Management : Mr. Lancy D'Souza,
 Management Representative.

For the workman : None Present

State : Maharashtra

Mumbai, dated the 06th day of June, 2012.

AWARD PART-II

This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

"Whether the action of the management of Bank of India in terminating the services of Smt. Priya Dinesh Pai, Special Assistant, by way of discharge from services of the bank with superannuating benefits vide punishment order dated 23-5-2001 is justified, valid and proportionate to the alleged charges of misconduct? If not, what relief the workman is entitled to and from which date and what other directions are necessary in the matter?

It is not necessary to narrate the facts here as the facts have been stated in detail in the Award Part-I dated 8-9-2011.

Following are the issues :

- (1) Whether the workman proves that the enquiry conducted against her is not fair and proper?
- (2) Whether the workman proves that the findings of the Enquiry Officer are not legal?
- (3) Whether the workman proves that the action of the Bank in terminating her services by way of discharge with superannuation benefits vide Punishment Order dt. 23rd May, 2001 is not justified, valid and proportionate to the charges of misconduct?
- (4) What reliefs?

Issues nos. 1 and 2 have been decided against the second party workman.

Thereafter the second party workman has filed her affidavit and she has been cross-examined by learned counsel for the first party.

Heard Shri Lancy D'Souza learned counsel for the first party on the remaining issues.

ISSUE No. 3:

The second party workman has been found to be guilty of the charge of engaging herself in trade or business as sole proprietor of M/s. Akshar Computers while in service of the first party and she has been punished with discharge from service with superannuation benefits.

This Tribunal has held in Award Part-I passed on 8-9-2011 that the enquiry conducted against the second party workman is fair and proper and there is absolutely no basis to hold that the findings of the Enquiry Officer are not legal or are perverse.

Once there has been an enquiry in accordance with the principles of natural justice and the findings recorded at that enquiry are not frowned upon then this Tribunal should not interfere with the quantum of punishment unless the punishment is shown to be vitiated by malafides. This certainly is not the position in the present case.

There is nothing in the statement of the second party workman to suggest that the punishment is disproportionate

Considering all the facts and circumstances of the matter I do not think that the punishment imposed against the second party workman is shockingly disproportionate to the charge levelled against her so as to warrant interference by this Tribunal.

Issue no. 3 is, therefore, decided against the second party workman and in favour of the first party.

ISSUE No. 4:

The second party workman is not entitled to any relief.

Award Part-II is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2333. औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय 1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/43/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/2/2004 आई आर (बी-11)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2333.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/43/2004) of the Central Government Industrial Tribunal-cum-Labour Court-1, Mumbai now as shown in the

Annexure, in the Industrial Dispute between the employers in relation to the management of Central Bank of India and the workman, which was received by the Central Government on 31-05-2012.

[No. L-12012/2/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present

JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE No. CGIT-1/43 OF 2004

Employers in relation to the management of Central Bank of India

And

Their workman (Shantaram B. Kajrekar)

Appearances:

For the Management : Shri Lancy D'Souza,
: Management Representative.
For the workman : Absent
State : Maharashtra
Mumbai, dated the 20th day of April 2012.

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

Whether the action of the management of Central Bank of India, Ratnagiri Branch, Maharashtra in terminating the services of Sh. Shantaram Bhikaji Kajrekar, Peon w.e.f. 1-10-2002 is legal and justified? If not, to what relief the workman is entitled for?

2. According to the statement of claim filed by the workman Shantaram Bhikaji Kajrekar the Branch Manager orally told him on 30-9-2000 not to come in the office from 1-10-2002. Thus his services were terminated without proper and justifiable reasons and without giving any chargesheet and without holding proper enquiry. No notice was given and no notice pay was paid to the workman. The main work of the workman was to clean office room and table, chairs, cupboards in the office and handover letters, hundies to the parties residing or doing business in the vicinity. The workman completed more than 240 days of service in all previous accounting years since his appointment. His termination is totally illegal. The workman has, therefore, prayed that he be reinstated with full back wages and continuity of service.

3. The Central Bank of India has filed written statement wherein it had stated that it is a nationalised Bank and it has its rules and regulations for appointment

and recruitment of employees. Apart from its regular employees the Bank does engage workmen on daily wages when its regular employees are absent or after looking to the exigencies of work. Such casual workers are engaged on day to day basis. The workman was engaged by the Bank at its Ratnagiri Branch as a casual employee for cleaning the premises of the Bank and for doing other petty works and, therefore, non-engagement of such casual worker does not amount to his dismissal or termination.

4. The workman has filed rejoinder wherein he has reiterated his stand.

5. The workman has filed his affidavit and he has been cross-examined by learned representative the Bank. The workman has also filed affidavit of one Vijay Rajaram Shelar but the workman has not been able to produce the above witness for cross-examination and, therefore, the affidavit of Vijai Rajaram Shelar cannot be read in evidence.

6. The Bank has filed affidavit of its Senior Manager Sankaran Gopinathan Madhukumar.

7. The workman absented and, therefore, a notice was issued to him in pursuance of the order sheet dt. 9-3-2011. The workman did not turn up inspite of service of the notice as per the order sheet dtd. 21-4-2011.

8. Heard Shri Lancy on behalf of the Bank.

9. The Bank's witness Sankaran Gopinathan Madhukumar, Senior Manager at the central office of the Bank has stated in his cross-examination that the workman was engaged on casual basis on daily wages for doing the work of cleaning the premises and he was also required to do other petty works as assigned to him. He has stated that the workman was required to work in the Bank on need basis and he was paid wages for the day he had worked on daily basis. The above witness has not been cross-examined and, therefore, there is no ground to disbelieve the above witness. The workman has also admitted in his cross examination that he was employed by the Bank on daily wages and the Bank paid wages to him for part time sweeper. He has admitted that he was not issued any appointment letter.

10. There is absolutely no proof of the fact that the workman ever worked for 240 days or more in any calendar year.

11. It is thus clear that the workman was a part time casual worker.

12. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Merely because a temporary employee or a casual wage worker is continued for a pretty long time he will not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance. Unless the appointment is in terms of the

relevant rules and after a proper competition among qualified persons the same will not confer any right on the appointee. If it is an engagement or appointment on daily wages or casual basis the same will come to an end when it is discontinued.

13. In view of the above discussion I am clearly of the view that the impugned action of the Bank is legal and justified.

14. Consequently the workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 15 जून, 2012

क्र.आ. 2334.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/2/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/85/2007-आई आर (बी-II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2334.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/2/2008) of the Central Government Industrial Tribunal-cum-Labour Court-1, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 31-05-2012.

[No. L-12012/85/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present

JUSTICE G. S. SARRAF, Presiding Officer

REFERENCE No. CGIT-1/2 OF 2008

Employers in relation to the management of Bank of Baroda

And

Their workman (Ram Singh)

Appearances:

For the Management : Shri Lancy D'Souza,
: Management Representative.

For the workman : Absent

State : Maharashtra

Mumbai, dated the 20th April, 2012.

AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows :

Whether the action of the management of Bank of Baroda, Shanti Niketan Branch in terminating the workman, Shri Ram Singh, Sweeper, orally w.e.f. 7-7-2006 is justified and proper? If not, then what relief the workman is entitled to?

2. According to the statement of claim filed by the workman the workman Ram Singh worked for about 15 years as part time sweeper in the Bank of Baroda up to 15-7-2006. His services were orally terminated on 16.7.2006 by Chief Manager, Shanti Niketan Branch, Khar. The Bank has thus violated the mandatory provisions of Sastry Award, Desai Award, Bipartite settlement and provisions of Section 5(2) of the Payment of Wages Act while terminating his services. The workman has, therefore, prayed that he be reinstated with full back wages, status and privileges of full time employee.

3. The Bank has filed written statement wherein it has stated that the workman was engaged for cleaning toilets purely on temporary basis as and when required for the period between March 2005 to July 2006 and he was paid wages daily for the work done. The workman worked for about half an hour per day and he was free to do any other work elsewhere. The Bank has, therefore, prayed that the statement of claim filed by the workman be rejected.

4. After filing the statement of claim the workman did not appear before the Tribunal. Therefore, a notice was issued to him vide order sheet dt. 2-12-2010. The workman however, remained absent on the next date i.e. 6-1-2011 in spite of service of notice and failed to turn up on subsequent dates. Therefore, by order dt. 27-7-2011 passed by this Tribunal the matter was directed to proceed ex parte.

5. The Bank has filed affidavit of its Senior Manager Wendy Fernandes.

6. Heard learned representative of the Bank.

7. The witness of the Bank Wendy Fernandes has stated in her affidavit that the workman was engaged for the period between March 2005 to 15th July, 2006 on temporary basis (part time) for cleaning toilets as and when required. She has stated that the workman worked for about half an hour per day and he was paid wages daily. She has stated that when P.D. Hinduja Marg, Khar Branch was shifted to Shanti Niketan Branch premises the services of the workman were no longer required and the Branch did not engage him thereafter. The above witness of the Bank has not been cross-examined. There is no ground to disbelieve her and there is absolutely no evidence on the record to the contrary.

8. It is thus clear that the workman was a part time casual worker.

9. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Merely because a temporary employee or a casual wage worker is continued for a pretty long time he will not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance. Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons the same will not confer any right on the appointee. If it is an engagement or appointment on daily wages or casual basis the same will come to an end when it is discontinued.

10. In view of the above discussion I am clearly of the view that the impugned action of the Bank is legal and justified.

11. Consequently the workman is not entitled to any relief.

Award is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2335.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अमुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/87/ 2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-5-2012 को प्राप्त हुआ था।

[सं. एल-12012/136/2004-आईआर (बी-11)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2335.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/87/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 31-05-2012.

[No. L-12012/136/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND,
PRESIDING OFFICER,**

CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/87/2004

Date: 24-04-2012

Party No. 1: The Asstt. General Manager,
Bank of India, Nagpur Zone, Zonal Office,
S. V. Patel marg, Post Box no. 4,
Nagpur-440001

Versus

Party No. 2: Sh. Madhusudhan R. Agrawal,
R/o. Deori, Tah. Deori,
District Gondia, Maharashtra.

AWARD

(Dated: 24th April, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bank of India and their workman. Shri Madhusudhan R. Agrawal, for adjudication, as per letter No. L-12012/136/2004-IR (B-II) dated 29-09-2004, with the following schedule :-

"Whether the action of the management of Bank of India, Nagpur (M.S.) in awarding the punishment of dismissal from service w.e.f. 30-03-2002 to Shri Madhusudhan Rameshwardasji Agrawal, Clerk, Gondia Branch, is justified? If not, what relief the workman concerned is entitled to?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Madhusudhan Agrawal, (the workman" in short), filed the statement of claim and the management of the Bank of India ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he is a B.Com graduate from Nagpur university and he came to be appointed as a clerk by the party no. 1 in 1984 and was posted to Hinganghat branch of the Bank and in 1985, he was transferred to Deori and in 1995, he was transferred to Nagbhid branch and 2001, he was transferred to Gondia branch and his entire service record was clean and excellent and while working at Gondia, a memo was issued against him on 15-03-2001, on the allegation that he collected an amount of Rs. 1000 on 28-12-1999 and Rs. 700 on 21-01-2000 in the name of recovery but, did not deposit the said amount in the Bank and he submitted his reply on 24-03-2001, denying the allegations and stating that the said amounts were deposited with the officer of the Bank, but party no. 1 served the charge sheet dated 06-10-2001 on him, in which, he was charged for committing the misconduct covered by clause 19.05 (i) of first Bi-partite Settlement and party no. 1 appointed Shri M. D. Atre as the enquiry officer and the enquiry officer conducted the enquiry in a most arbitrary and illegal manner and submitted his report to the management on 07-01-2002, holding the charges to have been proved against him and on the basis of his one sided and perverse findings, the party no. 1 dismissed him from services by order dated 30-03-2002 and his appeal against the order of dismissal also came to be rejected. The further case of the workman is that he is a workman and the party no. 1 is covered by the Bombay Shops and Establishment Act, 1948 and therefore, the Standing Orders are also applicable to party no. 1 and as per the judgment of the Hon'ble Supreme Court, Standing Orders

have overwriting effect and therefore, the charge sheet should have been issued against him under the Standing Orders only and the non-issuance of the charge sheet under the Standing Orders is illegal and the entire enquiry is ab-initio void and the Bipartite Settlement cannot bind him (workman) as the said settlement had been signed by the Indian Bank Association, which is not an employer and therefore, the entire enquiry was illegal and the entire enquiry is also vitiated on the ground that he was not allowed to engage an advocate and the enquiry officer misguided him of there being no need to engage advocate as the charge was minor and he was not supplied with copy of necessary and vital documents, necessary for his defence and for want of documents, the entire enquiry is illegal and the enquiry officer exhibited all the documents before the same were proved and such a procedure is unknown to law.

The further case of the workman is that the enquiry officer did not consider the evidence adduced in his defence and also did not appreciate the evidence properly, so the findings of the enquiry officer are perverse and the Appellate authority also did not consider the evidence on record and submission made by him and maintained the order passed by the disciplinary authority and the punishment of dismissal from service after about 20 years of service is shockingly disproportionate.

The workman has prayed to reinstate him in service with all consequential benefits.

3. The party no. 1 denying all the allegations made in the statement of claim has pleaded inter-alia that the workman while working at Gondia, collected an amount of Rs. 1000 and Rs. 700 on 28-12-1999 and 21-01-2000 respectively, under the grab of recovery and failed to deposit the said amount in the Bank and as such, it was constrained to issue memo dated 15-03-2001 and the workman submitted his reply on 24-03-2001 and on 06-10-2001, charge sheet was submitted against the workman under clause 19.5 (j) of first Bipartite Settlement and Shri M.D. Atre was appointed as the enquiry officer and the enquiry was not conducted in a arbitrary manner or illegally as alleged in the statement of claim and the enquiry officer submitted his report on 07-01-2002, holding the charges to have been proved against the workman and the findings of the enquiry officer are not perverse or one sided and after issuing of show cause notice, the workman was dismissed from services by its order dated 30-03-2002 and the appeal filed by the workman against the order of punishment was also dismissed. The further case of the party no. 1 is that it is not covered by the Bombay Shops and Establishment Act, 1948 and Standing Orders are also not applicable to it and there was no question of issuing the charge sheet under the Standing Orders and the Bipartite Settlement is binding on the workman and the enquiry was not vitiated for not allowing the workman to engage advocate and the enquiry officer did not misguide the workman in connection with

engagement of advocate and all the necessary documents were supplied to the workman as and when demanded and the workman had acknowledged the same and 20-11-2001, the workman and his defence representative applied before the enquiry officer for inspection of the records and the enquiry officer allowed the application and permitted for inspection of the record and the findings of the enquiry officer are not perverse and the appellate authority in terms of the directions issued by the Hon'ble High Court in its order dated 10-12-2003 passed in writ petition 4230/2002 gave an opportunity of personal hearing to the workman and at the time of personal hearing, the workman had engaged Shri Tushar Agrawal, Advocate as his defence representative and the appellate authority after granting the opportunity of personal hearing to the workman, dismissed the appeal by passing a detailed order dated 28-02-2004 and Standings Orders are not applicable to it and such contention is contrary to the actual legal position and at no point of time, the workman had made any application before the enquiry officer for grant of permission to engage the advocate as his defence representative and the punishment imposed is perfectly legal and justified looking into the misconducts committed by the workman and the reference is devoid of merit and the workman is not entitled to any relief.

4. As the punishment of dismissal from services was passed against the workman, after holding a departmental enquiry, the validity of the departmental enquiry was taken up for consideration as a preliminary issue and as per order dated 04-07-2007, the departmental enquiry was held to be legal, proper and valid.

5. At the time to argument, it was submitted by the learned advocate for the workman that the evidence of the witnesses examined on behalf of the management in the enquiry is not trustworthy and such evidence does not prove the charges leveled against the workman and there is no evidence of misappropriation rendered by any of the management's witness and therefore the findings of the enquiry officer are perverse and there is no answer by the management, to the question that if Rs. 1700 was misappropriated by the workman, then why the said amount was not received by the bank as stated by Shri D.B. Pillare in his cross-examination and therefore, the entire report is one sided and the enquiry officer and management were not justified in coming to the conclusion that charges against the workman were proved. It was further contended by the learned advocate for the workman that the order of dismissal was issued without any notice to the workman and dismissal is the severest punishment and before passing of the order of punishment, the past record of the workman, which was clean and excellent was not considered and as the findings of the enquiry officer are perverse and not supported by any evidence, the punishment of dismissal is shockingly disproportionate and is liable to be set aside and in the alternative, the punishment of dismissal can be converted to retirement.

so that the workman will be entitled to some benefit of 20 years of service rendered in the bank.

6. Per contra, it was submitted by the learned advocate for the party no. 1 that by order dated 04-07-2007, it has already been held that the departmental enquiry conducted against the workman was fair and proper and charge of misappropriation of an amount of Rs. 1700 was leveled against the workman and the said charge amounts to gross misconduct in terms of clause 19.5 (j) of the Bipartite Settlement and the enquiry officer while holding the charge against the workman to be proved, has taken into consideration the evidence adduced and the documents filed before him and the enquiry officer has given sufficient reasons for holding the charges to be proved against the workman and the disciplinary authority issued a show cause notice on 15-03-2002 to the workman, which was duly received by him and an opportunity of personal hearing was also granted to the workman to show cause against the proposed punishment of "dismissal without notice" and the workman in terms of the show cause notice appeared before the disciplinary authority with his defence representative and the workman was heard in person by the disciplinary authority and thereafter, the order of punishment was passed and as such, the contention raised by the workman that the punishment order was passed without notice is out and out incorrect and the disciplinary authority has also assigned cogent reasons for imposing the punishment of dismissal from services without notice against the workman and the party no. 1 lost confidence on the workman and while imposing punishment for misappropriation, it is not necessary to take into consideration the past service records as the misconduct proved against the workman involved integrity and the same had caused loss to the bank and the findings of the enquiry officer are legal and justified and the punishment imposed is also legal and valid considering the gravity of the misconduct committed by the workman and which has proved in the properly conducted departmental enquiry and therefore, there is no scope to interfere with the punishment.

In support of such contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in 1996 1 CLR -386 (B.C. Chaturvedi Vs. Union of India), AIR 2006 SC-2208 (General Secretary South Indian Cashew Factories workers union Vs. Managing Director), 2004 1 CLR-26 (State of Haryana Vs. Sukbir Singh), 2001 1 CLR-699 (Karnataka Road Transport Corporation Vs. B. S. Hultikatts) and 2008 1 CLR- 888 (Uttaranchal Transport Corporation Vs. Sanjay Kumar Nantiyal).

7. Before entering into the merit of the matter of the case in hand, I think it apposite to mention the principles enunciated by the Hon'ble courts in the decisions cited by the learned advocate for the party no. 1.

- (A) In the decision reported in 1996(1) CLR-389(Supra), the Hon 'ble Apex court have held that : -

"A review of the above legal position would establish that the disciplinary authority and an appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directly the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

- (B) In the decision reported in AIR 2006 SC 2208 (Supra), the Hon'ble Apex Court have held that :—

"When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimization or malafides or unfair labour practice, Labour court has no power to interfere with the punishment imposed by the management."

The view of the Hon'ble courts in the other three decisions is also more or less similar to the principles enunciated by the Hon 'ble Apex Court in the two decisions mentioned above.

8. So, now, keeping in view the principles enunciated by the Hon'ble courts in the decisions mentioned above, the present case at hand is to be considered.

From the submissions made by the learned advocate for the workman, it is found that his main contention is that there is insufficient evidence on the record of the enquiry proceedings and the evidence adduced by the management is not sufficient to hold the workman guilty of the charges leveled against him. However, it is necessary to mention here that it is well settled by the Hon 'ble Apex Court in a number of decisions including in the decision reported in 1996 1 CLR-389 (Supra) that, "Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts the evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The court/Tribunal may interfere, where the authority hold

the proceedings against the delinquent officer in a manner inconsistent with the rules or natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence, if the conclusion or findings be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or finding and mould the relief so as to make it appropriate to the facts of each case.

In this case, after going through the evidence adduced in the departmental enquiry, it is found that this is not a case of no evidence. The enquiry officer has analyzed the evidence produced in the enquiry in a rational and logical manner to arrive at the findings. Cogent reasons have been assigned by the enquiry officer in support of the findings. The evidence adduced by the management in the enquiry clearly establishes the entrustment of Rs. 1700 to the workman by Shri D.B. Pillare and that such amount was not accounted for by the workman. The conclusion reached by the enquiry officer cannot be said to be such as no reasonable person would have ever reached. The findings of the enquiry officer are based on the evidence produced during the departmental enquiry. Hence, it cannot be said that the findings of the enquiry officer are perverse.

9. So far the question of proportionality of punishment is concerned, it was submitted by the learned advocate for the workman that the past clean and excellent service record of the workman was not taken into consideration while imposing the punishment and before passing of the order the punishment, no notice was issued to the workman and therefore, the punishment of dismissal is shockingly disproportionate. In reply, the learned advocate for the party no. 1 submitted that before the punishment was imposed, show cause notice was issued to the workman and the workman was also heard in person and as the charge of misappropriation of money, was proved against the workman, which is a major misconduct, there was no need to consider his past record.

On perusal of the documents relating to departmental enquiry held against the workman, it is found that show cause notice was issued to the workman and he was also heard in person by the disciplinary authority before the punishment was imposed and the contention that no notice was issued is not correct.

It is also well settled that in case of proved misappropriation, there is no question of considering the past record. It is the discretion of the employer to consider the same in appropriate cases. Hence, I find no force in the contentions raised by the learned advocate for the workman.

In this case, grave misconduct of misappropriation of money has been proved against the workman, who was working as an officer of the bank, in a properly conducted departmental enquiry. The management of the Bank had entirely lost confidence in the workman. Hence, there is no question of showing any leniency to the workman.

The punishment of dismissal from service imposed against the workman cannot be said to be shocking disproportionate by taking into consideration the entire facts and circumstances of the case including the gravity of the misconduct proved against the workman. So, there is no scope to interfere with the punishment. Hence, it is ordered :—

ORDER

The action of the management of Bank of India, Nagpur (M.S.) in awarding the punishment of dismissal from service w.e.f. 30-03-2002 to Shri Madhusudan Rameshwardasji Agrawal, Clerk, Gondia Branch, is justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2336.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 39/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/2/2007 आईआर (बी-11)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2336.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 39/2007) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Overseas Bank and their workman, which was received by the Central Government on 23-05-2012.

[No. L-12012/2/2007-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Monday, the 21st May, 2012

Present : A. N. JANARDANAN, Presiding Officer

Industrial Dispute No. 39/2007

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Overseas Bank and their Workman)

Between

Sri K. Dhanarajan : 1st Party/Petitioner
Vs.

The Regional Manager : 2nd Party/Respondent
Indian Overseas Bank
Regional Office, No. 11/952,

Cross-Cut Road, Gandhipuram
Coimbatore-641012

Appearance:

For the 1st Party/ : M/s. Balan Haridas, Advocate
Petitioner

For the 2nd Party/ : M/s. NGR Prasad,
Management K. Srinivasamurthy,
V. Stalin

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-12012/2/2007-IR (B-II) dated 26-06-2007 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Regional office, Indian Overseas Bank, Coimbatore in imposing the punishment of Compulsory Retirement vide order dated 01-03-2005 on Sri K. Dhanarajan is justified? If not, to what the workman is entitled?”

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 39/2007 and issued notices to both sides. Both sides entered appearance through their advocates and filed their Claim Statement, Counter Statement, Additional Claim and Additional Counter as the case may be.

3. The averments in the Claim Statement briefly read as follows :

Petitioner appointed as Clerk on 24-02-1986 at Kurichi Branch, Sundarapuram, Coimbatore was charge sheeted on 22-12-2004 during his treatment for infective hepatitis. He resumed duty on 08-02-2005. After Show Cause Notice dated 07-02-2005 he was imposed with the punishment of Compulsory Retirement as per order dated 01-03-2005. Due to revenge and retaliation of the Regional Office of the Bank, Coimbatore. He was charged for not attending office during 2004 viz, for 266 days and for absence during November and December 2003 for not improving attendance despite repeated warnings for earlier charge sheeted thrice. He was charged for major misconduct under Clause-5(e) and Clause-5(f) of Memorandum of Settlement dated 10-04-2002. There was no enquiry held. In the Show Cause Notice the period of absence was noted as 314 days. The break-up of the period is as follows :

From January 2004 to May 2004	152 days
From June 2004 to September 15, 2004	26 days
From September 17, 2004 to December 4, 2004	80 days
Act of God (Accident) dislocation of Right Hand Shoulder)	
December 16, 2004 to February 7, 2005	56 days
Act of God (Hepatitis)	

Total: 314 days

The findings are perverse and vitiated due to the revenge and retaliation stand enumerated in the Claim Statement. The impugned Compulsory Retirement is misuse of power in excess of jurisdiction, biased, malafide,

conspiring and ignorance of juris and unfair labour practice to victimize the petitioner in a dexterous manner. The petitioner is to be reinstated into service with full back wages and all other benefits.

4 Counter Statement contention bereft of unnecessary details are as follows.

It is difficult to follow the pleadings in the Claim Statement. The track record of Petitioner/Clerk is as follows :

Misconduct	Action taken at Regional office, Coimbatore
1. Charge Sheet dated 08-08-1996 for unauthorized absence, insubordination and cheque return	Awarded punishment of “Bringing down his Basic Pay by two stages on 30-9-1996”.
2. 30-05-1997 - Charge Sheeted for frequent leave	Increment stopped for 6 months—23-06-1997
3. 08-01-1999 -Charge Sheeted for frequent leave	Awarded punishment of “Bringing down his Basic Pay by one Stage”.
4. On 17-02-2004, the cheque issued by him was returned	His SB Account was closed, cheque book facility was withdrawn and salary was paid through Banker's cheque

His conduct did not improve. On 22-12-2004 petitioner was charge sheeted for unauthorized absence for 266 days during January to December 2004. Even before the Charge Sheet, Regional Medical Board, Coimbatore to whom he was referred, after examining him informed the Bank that he became fit enough to resume duty. Chief Manager, Coimbatore with other officials met him on 20-01-2005 and advised him not to be absent. He was also informed that if he did not join duty by 05-02-2005 the charge sheeted enquiry will be proceeded with. Petitioner having not resumed duty Show Cause Notice was issued on 07-02-2005 proposing Compulsory Retirement. He submitted explanation on 20-02-2005. Thereafter also he stood with lame excuses for being un-authorizedly absent. Hence on 01-03-2005 Compulsory Retirement Order was issued with superannuation benefits. His appeal of 14-04-2005 after personal hearing dated 25-05-2005 was dismissed on 27-05-2005. Bank will be able to establish the charges under Clause-5(e) and Clause-5(f) of Memorandum of Bipartite Settlement dated 10-04-2002 and an opportunity thereto is to be given to the Bank. Petitioner was not given his increments due to his unauthorized absence. Chief Officer, Stephen Paul Anandham of Regional Office, Coimbatore, the Disciplinary Authority is competent to issue charge. Petitioner could have proved his suffering from Hepatitis if it was true with request for leave. Since he did not report for duty even after being fit

disciplinary proceedings are completed against him. Central Office guides Regional Office and therefore no action is liable to be taken against the Branch Manager and the Regional Office. There is nothing wrong in closing his SB Account for want of funds since Bank employees are expected to set standards when their own cheque bounce back. On 28-11-2003 Regional Office wrote to the Dean of the Coimbatore Medical College to examine the petitioner by a Medical Board and report. The Branch on instructions from Regional Office advised the petitioner to report for medical examination on 02-12-2003 but he did not appear. Subsequently he was advised by the Medical College to report before the Board on 22-12-2003 and remit Rs. 30. He was also asked to produce his medical case reports but he appeared without records. Hence he was not examined by the Board. Petitioner cannot state that he was not examined by the Board for the above reason. On 03-05-2004 he was examined by the Board certifying that his leave from 11-01-2004 to 03-05-2004 was not justified and the petitioner was certified fit to join duty from 04-05-2004. He applied for leave from 04-05-2004 to 07-05-2004 and reported for duty on 08-05-2004 but he left Bank the very day without even signing the Attendance Register or attend to any work. Thereafter on 31-05-2004 he rejoined duty without leave letters for his absence for the prior days. He stopped attending office from 01-06-2004. It is not true that Regional Office advised petitioner to join duty on 31-05-2004. No undertaking was asked for from the petitioner. Bank cannot endlessly wait for the petitioner to join duty. 10-06-2004 was fixed as last day for reporting for duty by the petitioner. It was another opportunity given to him, not perse meaning that his earlier absence is authorized. Petitioner had been given much latitude and there was no improvement. Regional Office was advised to issue a recall letter to the petitioner to join duty immediately and treat his absence from 27-10-2003 to 20-12-2003, 11-01-2004 to 30-05-2004 and 02-06-2004 as unauthorized absence. Since he continued to be absent he was asked to give explanation for the same during July, August and September 2004. He only submitted a reply on 30-10-2004 to pay him his increments and salary arrears without having worked. Due to his continuously defying orders stand and not reporting for work and committal of habitual misconduct charge sheet was issued dated 22-12-2004. His explanation dated 06-01-2005 being no satisfactory, the Regional Office on 07-02-2005 proposed Compulsory Retirement with superannuation benefits. His reply dated 20-02-2005 being allegedly due to Act of God not satisfactory, on 01-03-2005 Bank passed Compulsory Retirement Order. His appeal was dismissed of his PF was paid amounting to Rs. 1,64,620.00 which he received without demur. His Compulsory Retirement also considered with his past record of service is justified the claim is only to be dismissed.

5. The averments in the Additional Claim Statement briefly read as follows:

Due to various ailments petitioner had to avail leave on medical grounds from November 2003 onwards. He had submitted leave application with Medical Certificate showing the nature of ailment but the Respondent did not sanction leave without basis but rejected. Though Medical Board issued Fitness Certificate to join duty from 04-05-2004, immediately thereafter he faced dislocation of his right shoulder for which taking treatment he had been sending leave letter with Medical Certificate. While so, he was affected with Hepatitis which necessitated extension of leave with Medical Certificate and lab reports. To the 22-12-2004 Charge Sheet petitioner gave explanation on 20-02-2005 dehying the allegations. Petitioner was taking all efforts to resume work. While so he was compulsorily retired. No enquiry was conducted before the punishment. Leave was neither rejected nor sanctioned. Leave letters and Medical Certificates were not questioned in any manner. He is entitled to be paid Subsistence Allowance for imposing capital punishment without enquiry. Without proving the present misconduct reference to earlier punishment is of no consequence. The earlier punishments were not questioned since petitioner had no means to litigate. His conduct cannot be construed as habitual. The punishment is grossly disproportionate to the allegations. He is not gainfully employed now and is suffering. The punishment has to be interfered with under Section-11A. Punishment would amount to legal victimization. Rejection of appeal is without application of mind. He is to be reinstated with all benefits.

6. Additional Counter Statement contentions briefly read as follows. The details of petitioner's absence from the Bank are as follows.

December 2003	31 days
January 2004	31 days
February 2004	29 days
March 2004	31 days
April 2004	30 days
May 2004	31 days
June 2004	1, 2, 3, 10, 21, 22, (6 days)
July 2004	8, 13, 23 (3 days)
August 2004	1, 9, 17, 18, 19, 26 (6 days)
September 2004	2, 3, 7 to 10; 13 to 30 (24 days)
October 2004	31 days
November 2004	30 days
December 2004	1 to 4, 8, 9, 16 to 31 (22 days)
January 2005	31 days
February 2005	28 days

Regarding dislocation of his right shoulder he has not mentioned in his explanation dated 20-02-2005 and is therefore an afterthought. For the past misconduct charge sheeted on 08-08-1996, 30-05-1997 and 08-01-1999 he was punished respectively of bringing down his Basic Pay, Stoppage of Increment by two stages and bringing down the Basic Pay by one stage. Due to no improvement in his conduct his misconduct was treated under Clause-5(e) and Clause-5(f) of the Bipartite Settlement. He did not

establish dislocation of shoulder and infective with Hepatitis. The reasons for his absence stated in the explanation dated 20-02-2005 are not correct. It is denied that earlier punishments were imposed arbitrarily and in vindictiveness. Punishment is not disproportionate. The Bank, a Public Utility Service can ill-afford an employee frequently absenting himself whose past record is bad.

7. Points for consideration are:

(i) Whether punishment of Compulsory Retirement on Sri K. Dhanarajan is justified?

(ii) To what relief the concerned workman is entitled?

8. The evidence consists of the oral evidence of WW1 and Ex. W1 to Ex. W 119 on the Petitioner's side and the testimony of MW1 and Ex. M1 to Ex. M 102 on the Respondent's side.

Points (i) and (ii)

9. Arguments advanced on behalf of the petitioner, inter-alia are that employer cannot terminate an employee without enquiry. No reason has been stated for termination without enquiry. However, Respondent Management has let in evidence before this Tribunal for the first time to prove the misconduct where the degree of proof required is strict proof of the charges by a close scrutiny for deriving satisfaction by Tribunal as to the misconduct having been proved committed. During May 2004 though the petitioner appeared before the Medical Board for examination he was not examined. Petitioner was to be admitted to duty by the Management only with the certificate of the Medical Board as admitted by MW1 in the box. This attitude of the Management tends to show an element of victimization towards him. His absence for 266 days has been treated as authorized leave hence his termination is legal victimization. Even if the charge is proved the punishment is disproportionate to the gravity of the misconduct and it is well within the power of this Tribunal to invoke Section-11A of the ID Act to interfere with the punishment. There is no justification for the Bank to treat the petitioner as habitual absentee. The charge sheet is false to allege that he was absent for the entire period 1/2004 to 12/2004 because his absence relates to only 266 days. So there is no proof of misconduct as in the Charge Sheet. Petitioner had been on leave on medical ground only. Past conduct is only to be taken into account only if the ongoing charge is proved. This is a case where the Management has not discharged its duty of holding enquiry before an employee is terminated of his services, though it has been enquired into before this Tribunal as the first count.

10. Contra arguments are that the petitioner has been only compulsorily retired for his habitual absenteeism. He had been charge three times previously for similar misconduct and punished which became final since the same were not challenged. Though on 03-05-2004 he was certified fit to resume duty by the Medical Board, he did not join on 04-05-2004. He only reported for duty on 31-05-2004 and thereafter again went on leave. In the case of the petitioner the bank has shown much indulgence. After 31-05-2004 also he remained absent. He is not a Pension Optee. His PF benefits and other superannuation

benefits were given which he received without any demur. The punishment is only to be upheld. This is not a case where the bank straightaway imposed the punishment of Compulsory Retirement.

11. Reliance placed on a number of decisions on behalf of the petitioner are CHAIRMAN-CUM-MANAGING DIRECTOR, COAL INDIA LTD. AND ANOTHER VS. MUKUL KUMAR CHOWDHARY AND OTHERS (CDJ-2009-SC-1698), JAGDISH SINGH VS. PUNJAB ENGINEERING COLLEGE AND OTHERS (2009-III-LLJ-373-SC), UNION OF INDIA AND OTHERS VS. DATTALINGA TOSHATWAD (2005-13-SCC-709) AND THE JUDGMENT DATED 12.04.2006 IN AYYAPPAN VS. THE DEPUTY COMMISSIONER OF POLICE, ARMED RESERVE, MADURAI CITY AND TWO OTHERS of the Hon'ble High Court of Madras of Hon'ble Justice P. Jothamani.

12. Reliance placed on a number of decisions on behalf of the Respondent are :

DELHI TRANSPORT CORPORATION VS. SARDAR SINGH (2004-7-SCC-574) wherein Supreme Court held "11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of Para-4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized".

AND NEW INDIA ASSURANCE CO. LTD. VS. VIPIN BIHARI LAL SRIVASTAVA (2008-3-SCC-446) wherein Supreme Court held "13. In Viveka Nand Sethi v. J & K Bank Ltd. this Court, inter alia, observed as follows : (SCC pp. 343-45, paras 14 and 18-20)

"14. What fell for consideration before the Industrial Tribunal was the interpretation and/or applicability of the said settlement. The Industrial Tribunal committed an error of record insofar as it proceeded on the basis that the said settlement had not been proved. The settlement being an admitted document should have been considered in its proper perspective by the Industrial Tribunal. Clause (2) of the said settlement is a complete code by itself. It lays down a complete machinery as to how and in what manner the employer can arrive at a satisfaction that the workman has no intention to join his duties. A bare perusal of the said settlement clearly shows that it is for the employee concerned to submit a proper application for leave. It is not in dispute that after the period of leave came to an end in June 1983, the workman did not report back for duties. He also did not submit any application for grant of further leave dated 02-11-1983 was issued and he was asked to join his duties. It is furthermore not in dispute that despite receipt of the said memorandum, the

workman did not join duties pursuant whereto he was served with a notice to show cause dated 31-12-1983. He was required to resume his duties by 15-01-1984. The Bank received a telegram on 17-01-1984 and only about a month thereafter he filed an application for grant of leave on medical ground. It is not the case of the workman that any leave on medical ground or otherwise was due to him. Opportunities after opportunities indisputably had been granted to the workman to explain his position but chose not to do so except filing applications for grant of medical leave and that too without annexing proper medical certificates".

13. On consideration of the rival contentions I am not impressed by the arguments on behalf of the petitioner that the petitioner is not guilty of the misconduct. The misconduct against the petitioner has been proved by the Management letting in evidence for the first time in the absence of an enquiry held by it prior to the termination. When the misconduct has been proved to the satisfaction of the Tribunal for entering into such a finding the burden is upon the petitioner to show that there was no negligence or lack of interest in work. The testimony of the petitioner as WW1 in the box is that from January 2004 to May 2004 his absence was due to his not having been permitted to resume duty by the Bank. Admittedly, his leave from 11-01-2004 to 03-05-2004 was not justified by the Medical Board. Though he was certified fit to join duty on 04-05-2004 he did not join because the Bank did not permit alleging that confirmation from Regional Office is required. Thereafter he went to the Branch on 08-05-2004. He does not know whether he gave leave letter in the meantime for the intervening days. From 08-05-2004 to 30-05-2004 he did not give leave letter. On 31-05-2004 he reported for duty. From 01-06-2004 he did not attend duty because he had to appear at Sivakasi Magistrate Court. According to MW1, Senior Manager of the Respondent/Bank, on 04-05-2004 petitioner was not being permitted to join duty for want of instruction from the Regional Office. Petitioner was permitted to join duty on 31-05-2004. It is admitted that petitioner got injured in a bike accident on 17-09-2004 causing injury to his shoulder. Petitioner submitted leave applications with Medical Certificates issued by Government doctor. No intimation has been given to the petitioner stating that leave applications are rejected.

14. Now the question arises whether the conduct of the petitioner has been such as to merit consideration for a lenient treatment in the matter of punishment than the one imposed by way of Compulsory Retirement in the wake of which, he being not a pension optee, has received the PF amounts and other benefits without any demur? The totality of the evidence on either side is not apt to show that the petitioner absented from duty due to any lack of interest in work only. Though his periods of absence date back to 2003 it is in continuation or continual to such absence that he had been absent from duty in 2004 which

is for various reasons of sickness, injury due to accident, etc. It is not disputed that on 04-05-2004 he was not permitted to join duty insisting for direction from the Regional Office though a physical fitness certificate was produced by him. This cannot be attributed to the petitioner. Though the Medical Board certified that his period of absence from duty from 11-01-2004 to 03-05-2004 is not justified, the petitioner has not taken steps to justify his absence for the said period in spite of such a certificate from the Medical Board. He has not ventured to justify his conduct of manifest absenteeism with any proper explanation. He was absent only for 266 days. It is false to have alleged that he was absent from 1/2004 to 12/2004 throughout. Though from the evidentiary facts and circumstances it is discernible that there has been some stray occasions at which he appears to have lost interest in his work and wanted to keep aloof from work, it is not to be taken for granted that he lost all interest in his work for ever. Though some indifference or impertinence appears from his conduct in the matter of work and availing of leave it could be for reasons beyond his control such as sickness and accident. It is pertinent to note that illness does not come after giving notice to the person. So much so applying for leave in advance always would be an impossibility. Yet an employee is not expected to deviate from reasonable conduct in all or any of the given occasions in which he has not been able to rise up to what is reasonably expected of him. Though his conduct becomes unendurable to the Management to maintain him in service if he recurs such conduct, that situation supervenes only if he repeats such conduct. That is not to be expected from an employee normally because as could be found in the given case he could be found to have availed leave substantially for most of the periods for valid reasons, of course with some periods not sufficiently or properly explained by him. According to me he is not to be found to be a person of habitual absenteeism of such an extent so as to terminate him from service leaving him as an ever incorrigible employee. Therefore, his punishment of compulsory retirement is too disproportionate and it is only to be set aside so as to allow him repent for his past and correct himself. Hence the punishment of compulsory retirement is set aside and he is ordered to be reinstated into service forthwith without back wages but with continuity of service and all other attendant benefits. Afterwards the Management may keep a watch on him as to his regularity in attending duty and work and ensure that he is not on frequent leave for any period without genuine medical or other reasons, whatever, except on compelling, unavoidable and unforeseen reasons.

15. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 21st May, 2012)

A. N. JANARDANAN, Presiding Officer

Witnesses Examined :

For the 1st Party/Petitioner

: WW 1, K. Dhanarajan

For the 2nd Party/Respondent

: MW 1, A. Ramakrishnan

Documents Marked :**On the Petitioner's side**

Ex. No.	Date	Description
Ex. W 1	10-09-2003	Branch Letter
Ex. W 2	10-09-2003	SHL application
Ex. W 3	06-09-2003	Engineer's Estimate
Ex. W 4	10-09-2003	Branch Letter
Ex. W 5	10-09-2003	Annexure-I, II—Term Loan Conversion
Ex. W 6	10-09-2003	Form-I, II and III
Ex. W 7	09-12-2003	Regd. Post Envelope
Ex. W 8	02-12-2003	Branch Letter—Medical Examination
Ex. W 9	17-12-2003	Letter to Branch
Ex. W 10	20-12-2003	Letter to Branch
Ex. W 11	17-12-2003	Medical Board Call Letter
Ex. W 12	20-12-2003	Treasury Receipt
Ex. W 13	23-12-2003	Letter to Branch
Ex. W 14	12-01-2004	Letter to Branch
Ex. W 15	22-12-2003	Clinical Report—Serum Total Bilrubin
Ex. W 16	21-12-2003	Medical Certificate
Ex. W 17	31-12-2003	Medical Certificate
Ex. W 18	11-01-2004	Fitness Certificate
Ex. W 19	27-03-2004	Letter to Dean
Ex. W 20	29-03-2004	Letter to IOB, AGM, C. O. Chennai
Ex. W 21	29-03-2004	Letter to IOB, GM, C. O. Chennai
Ex. W 22	29-03-2004	Letter to President, AIOBEU, Chennai
Ex. W 23	07-04-2004	Letter to IOB, G. M. C. O., Chennai
Ex. W 24	28-04-2004	Medical Board Call Letter
Ex. W 25	30-04-2004	Treasury Receipt
Ex. W 26	03-05-2004	Medical Board Fitness Certificate
Ex. W 27	10-05-2004	Letter to IOB, G.M. C. O., Chennai
Ex. W 28	21-05-2004	Letter to IOB, G.M. C. O., Chennai
Ex. W 29	27-05-2004	IOB, R.O. Cbe, Letter
Ex. W 30	28-05-2004	IOB, R. O. Cbe, Letter
Ex. W 31	01-06-2004	Letter to IOB, R. O. Che.
Ex. W 32	17-05-2004	Court Summon, JM, Sivakasi
Ex. W 33	29-04-2004	Letter to Commissioner E. P.W., Cbe
Ex. W 34	23-04-2004	Daily Thanthi Newspaper Cutting
Ex. W 35	20-09-2004	Letter to Branch
Ex. W 36	17-09-2004	Medical Certificate

Ex. W 37	11-10-1994	Medical Certificate
Ex. W 38	—	Branch Letter
Ex. W 39	18-10-2004	IOB, R. O. Che. Letter Unauthorised
Ex. W 40	30-10-2004	Letter to IOB, R. O. Cbe.
Ex. W 41	26-10-2004	Letter to Branch
Ex. W 42	26-10-2004	Medical Certificate
Ex. W 43	15-11-2004	Letter to Branch
Ex. W 44	16-11-2004	Letter to Branch
Ex. W 45	16-11-2004	Doctor's Prescription
Ex. W 46	15-11-2004	Medical Certificate
Ex. W 47	23-11-2004	Letter to Branch
Ex. W 48	21-11-2004	Medical Certificate
Ex. W 49	05-12-2004	Letter to Branch
Ex. W 50	01-12-2004	Medical Certificate
Ex. W 51	06-12-2004	Letter to Branch
Ex. W 52	05-12-2004	Fitness Certificate
Ex. W 53	10-12-2004	Letter to Branch
Ex. W 54	10-12-2004	Medical Certificate
Ex. W 55	10-12-2004	Fitness Certificate
Ex. W 56	17-12-2004	Letter to Branch
Ex. W 57	16-12-2004	Medical Certificate
Ex. W 58	16-12-2004	Doctor's Prescription
Ex. W 59	17-12-2004	Doctor's Prescription
Ex. W 60	17-12-2004	Clinical Report - Hametology
Ex. W 61	17-12-2004	Clinical Report - Serum Total Billirubin
Ex. W 62	17-12-2004	Clinical Report - Widal
Ex. W 63	17-12-2004	Clinical Report-Microscopical Exam
Ex. W 64	22-12-2004	Doctor's Prescription
Ex. W 65	22-12-2004	Clinical Report -Serum Total Billirubin
Ex. W 66	22-12-2004	Clinical Report - Widal
Ex. W 67	23-12-2004	Letter to Branch
Ex. W 68	22-12-2004	Medical Certificate
Ex. W 69	30-12-2004	Branch Letter
Ex. W 70	22-12-2004	IOB, RO., Cbe., Letter - Chargesheet
Ex. W 71	05-01-2005	Letter to IOB, G.M., C.O., Chennai
Ex. W 72	06-01-2005	Letter to IOB, G.M., C.O., Chennai
Ex. W 73	01-01-2005	Doctor's Prescription
Ex. W 74	01-01-2005	Medical Certificate
Ex. W 75	14-01-2005	Letter to IOB, Vigilance, C.O.,
Ex. W 76	17-01-2005	Letter to Branch
Ex. W 77	14-01-2005	Medical Certificate
Ex. W 78	13-01-2005	Doctor's Prescription
Ex. W 79	13-01-2005	Doctor's Prescription

Ex. W 80	13-01-2005	Clinical Report - Serum Total Billirubin
Ex. W 81	17-01-2005	Clinical Report - HbsAg
Ex. W 82	13-01-2005	Medical Certificate,
Ex. W 83	24-01-2005	Fitness Certificate'
Ex. W 84	21-01-2005	Letter to IOB, G.M., C.O., Chennai
Ex. W 85	27-01-2005	Letter to Branch
Ex. W 86	25-01-2005	Medical Certificate
Ex. W 87	27-01-2005	Clinical Report - Serum Total Billirubin
Ex. W 88	03-02-2005	Branch Letter
Ex. W 89	01-02-2005	IOB, R. O., Cbe., Letter-Show Cause Notice
Ex. W 90	07-02-2005	Letter to IOB, RO., Cbe.
Ex. W 91	07-02-2005	Letter to IOB, RO., Che.
Ex. W 92	22-02-2005	Letter to IOB, G.M. C.O., Chennai
Ex. W 93	01-03-2005	IOB, R. O., Cbe., Letter—Original Order
Ex. W 94	05-03-2005	Letter to IOB, G. M., C. O., Chennai
Ex. W 95	14-04-2005	Letter to IOB, D.G. M., C. O., Chennai—Hearing
Ex. W 96	03-05-2005	IOB, D.G. M., C. O., Chennai—Hearing
Ex. W 97	27-05-2005	IOB, D.G. M., C.O., Chennai—Appellate Order
Ex. W 98	14-06-2005	Letter to IOB, DGM, C.O., Chennai Appeal to Assistant Commissioner of Labour (Central) and Pending Disposal of Terminal Benefits
Ex. W 99	15-10-2005	Letter to IOB, G.M., M.C.O., Chennai
Ex. W 100	15-10-2005	Letter to IOB, D.G.M., C.O., Chennai
Ex. W 101	07-11-2005	IOB, PAD, C. O., Chennai
Ex. W 102	11-11-2005	Branch Letter
Ex. W 103	21-11-2005	Letter to Branch
Ex. W 104	22-05-2006	Branch Letter refund of P.F.
Ex. W 105	23-06-2006	IOB, PAD, C. O., Chennai
Ex. W 106	04-09-2006	Letter to Branch Refund of P.F.
Ex. W 107	07-09-2006	IOB, Kurichi Branch, Banker's Cheque
Ex. W 108	19-08-2006	Satna Syndicate Banker's Letter
Ex. W 109	21-09-2006	Letter to Satna
Ex. W 110	23-09-2006	Satna Syndicate Banker's cheque
Ex. W 111	09-09-2006	Pay-in-Slip
Ex. W 112	16-09-2006	Pay-in-Slip
Ex. W 113	19-09-2006	Pay-in-Slip
Ex. W 114	21-09-2006	Pay-in-Slip
Ex. W 115	08-08-2005	Letter to Assistant Commissioner of Labour (Central), Chennai
Ex. W 116	06-12-2005	IOB, R.O., Cbe—Reply to Assistant Commissioner of Labour (Central)
Ex. W 117	10-03-2006	IOB, R.O., Cbe—Reply to Assistant Commissioner of Labour (Central)
Ex. W 118	31-08-2006	IOB, IRD, C.O. Chennai—Reply to Assistant Commissioner of Labour (Central)
Ex. W 119	31-01-2008	Branch letter—Copy of Documents

On the Management's side

Ex. No.	Date	Description
Ex. M1	04-05-2001	Letter from the petitioner to respondent annexing medical certificate
Ex. M2	05-04-1991	Letter from the petitioner to respondent annexing medical certificate
Ex. M3	15-05-1991	Letter from the petitioner to respondent Correspondence among respondents
Ex. M4	25-05-1991	Correspondence among respondents
Ex. M5	09-06-1991, 24-05-1993, 27-05-1993, 28-05-1993, 24-05-1993, 30-05-1993, 01-06-1993, 03-06-1993, 04-06-1993, 04-06-1993, 07-06-1993, 08-06-1993, 08-06-1993, 12-06-1993, 09-06-1993, 11-06-1993, 14-06-1993, 19-06-1993, 28-06-1993, 29-06-1993, 22-09-1994, 15-09-1994, 23-09-1994, 15-09-1994, 22-09-1994, 22-09-1994, 10-11-1994, 13-11-1994, 06-11-1994, 20-08-1996, 24-08-1996, 28-08-1996, 04-09-1996, 21-10-1996, 21-11-1996, 01-12-1996, 07-01-1997, 14-01-1997, 18-01-1997, 08-11-2002, 12-11-2002, 21-11-2002, 13-12-2002, 31-12-2003, 26-01-2004, 14-01-2005, 25-01-2005.	Leave letters, medical certificates and certificate of fitness to return to duty with regard to petitioner
Ex. M6	18-10-1994	Correspondence among respondents
Ex. M7	18-06-1996	Correspondence among respondents
Ex. M8	08-08-1996	Charge Sheet
Ex. M9	03-09-1996	Petitioner letter to respondent
Ex. M10	21-08-1996	Petitioner letter to respondent
Ex. M11	24-08-1996	Petitioner letter to respondent
Ex. M12	09-10-1996	Correspondence among respondents
Ex. M13	06-11-1996	Correspondence among respondents
Ex. M14	21-11-1996	Petitioner letter to respondent
Ex. M15	31-12-1996	Correspondence among respondents
Ex. M16	11-02-1997	Petitioner letter to respondent
Ex. M17	26-03-1997	Correspondence among respondents
Ex. M18	28-04-1997	Correspondence among respondents
Ex. M19	05-04-1997	Petitioner letter to respondent
Ex. M20	05-05-1997	Petitioner letter to respondent
Ex. M21	10-05-1997	Correspondence among respondents
Ex. M22	15-05-1997	Correspondence among respondents
Ex. M23	30-05-1997	Charge Sheet
Ex. M24	14-06-1997	Petitioner letter to respondent
Ex. M25	23-06-1997	Respondent letter to petitioner
Ex. M26	January 1997	Leave particular upto 07-11-1997
Ex. M27	04-11-1998	Respondent letter to petitioner
Ex. M28	26-11-1998	Correspondence among respondents
Ex. M29	02-12-1998	Correspondence among respondents
Ex. M30	28-12-1998	Respondent letter to petitioner
Ex. M31	08-01-1999	Respondent letter to petitioner
Ex. M32	17-02-1999	Respondent letter to petitioner
Ex. M33	15-02-1999	Petitioner letter to respondent
Ex. M34	04-03-1999	Correspondence among respondents

Ex. M 35	24-03-1999	Respondent letter to petitioner
Ex. M 36	05-04-1999	Original order issued to petitioner
Ex. M 37	20-10-1999	Correspondence among respondents
Ex. M 38	13-11-2002	Petitioner letter to respondent
Ex. M 39	21-11-2002	Correspondence among respondents
Ex. M 40	23-11-2002	Petitioner letter to respondent
Ex. M 41	26-11-2002	Petitioner letter to respondent
Ex. M 42	09-12-2002	Correspondence among respondents
Ex. M 43	14-12-2002	Petitioner letter to respondent
Ex. M 44	23-12-2002	Correspondence among respondents
Ex. M 45	28-11-2003	Respondent letter to petitioner
Ex. M 46	10-12-2003	Respondent letter to Dean, Coimbatore Medical College Hospital
Ex. M 47	17-12-2003	Dean of Coimbatore Medical College Hospital letter to petitioner
Ex. M 48	06-01-2004	Respondent letter to Dean, Coimbatore Medical College Hospital
Ex. M 49	05-02-2004	Respondent letter to Dean, Coimbatore Medical College Hospital
Ex. M 50	03-04-2004	Correspondence among respondents
Ex. M 51	06-05-2004	Dean of Coimbatore Medical College Hospital letter to respondent
Ex. M 52	01-06-2004	Petitioner letter to Respondent
Ex. M 53	10-06-2004	Correspondence among Respondents
Ex. M 54	18-06-2004	Respondent letter to petitioner
Ex. M 55	20-09-2004	Petitioner letter to Respondent
Ex. M 56	27-09-2004	Correspondence among Respondents
Ex. M 57	06-10-2004	Correspondence among Respondents
Ex. M 58	12-10-2004	Petitioner letter to the respondent
Ex. M 59	18-10-2004	Respondent letter to the petitioner
Ex. M 60	21-10-2004	Correspondence among Respondent
Ex. M 61	26-10-2004	Respondent letter to the petitioner
Ex. M 62	26-10-2004	Petitioner letter to the Respondent
Ex. M 63	16-11-2004	Petitioner letter to the Respondent
Ex. M 64	23-11-2004	Petitioner letter to the Respondent
Ex. M 65	30-11-2004	Correspondence among Respondents
Ex. M 66	05-12-2004	Petitioner letter to the Respondent
Ex. M 67	06-12-2004	Petitioner letter to the Respondent
Ex. M 68	10-12-2004	Petitioner letter to the Respondent
Ex. M 69	10-12-2004	Correspondence among Respondents
Ex. M 70	17-12-2004	Petitioner letter to the Respondent
Ex. M 71	23-12-2004	Petitioner letter to the Respondent
Ex. M 72	Jan. to Dec. 2004	Leave details of the petitioner
Ex. M 73	7-01-2005	Petitioner letter to the Respondent
Ex. M 74	27-02-2005	Petitioner letter to the Respondent
Ex. M 75	01-02-2005	Respondent letter to the petitioner
Ex. M 76	07-02-2005	Show Cause Notice issued to the petitioner
Ex. M 77	14-02-2005	Respondent letter to Dr. U. M. Natarajan, Senior Medical Surgeon, CMCH, Coimbatore
Ex. M 78	28-02-2005	Respondent letter to Dr. U. M. Natarajan, Senior Medical Surgeon, CMCH, Coimbatore

Ex. M 79	01-03-2005	Original Order issued to petitioner
Ex. M 80	25-05-2005	Proceeding or personal hearing given to the petitioner
Ex. M 81	27-05-2005	Appellate Order issued to petitioner
Ex. M 82	27-10-2003	Medical Certificate
Ex. M 83	05-11-2003	Petitioner letter to the Respondent
Ex. M 84	06-11-2003	Medical Certificate
Ex. M 85	12-11-2003	Petitioner letter to the Respondent
Ex. M 86	17-12-2003	Letter from Coimbatore Medical College to the petitioner
Ex. M 87	12-01-2004	Petitioner letter to the Respondent
Ex. M 88	03-04-2004	Correspondence among Respondents
Ex. M 89	22-04-2004	Correspondence among Respondents
Ex. M 90	23-04-2004	Respondent letter to the petitioner
Ex. M 91	04-05-2004	Petitioner letter to the Respondent
Ex. M 92	08-05-2004	Petitioner letter to the Respondent
Ex. M 93	08-05-2004	Petitioner letter to the Respondent
Ex. M 94	13-05-2004	Letter from Coimbatore Medical College to the petitioner
Ex. M 95	27-05-2004	Correspondence among Respondents
Ex. M 96	17-09-2004	Medical Certificate
Ex. M 97	22-12-2004	Medical Certificate
Ex. M 98	01-01-2005	Medical Certificate
Ex. M 99	20-02-2005	Petitioner letter to the Respondent
Ex. M 100	20-03-2005	Note put up by the Chief Manager
Ex. M 101		Bank Statement of petitioner
Ex. M 102	22-12-2004	Charge Sheet issued to petitioner

नई दिल्ली, 15 जून, 2012

का.आ. 2337.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/19/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-06-2012 को प्राप्त हुआ था।

[सं. एल-12012/332/1995 आईआर (बी II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2337.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref. No. CGIT/LC/19/1997) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 04-06-2012.

[No. I-12012/332/1995-IR (B-II)]

SHREE SH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/19/97

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Chandra Prakash Yadu.

Qr. No. E/15.

State Bank Colony, Sector-6,

Bhilai, Distt. Durg (MP)

...Workman

Versus

Branch Manager,

Punjab National Bank,

Medical College Road,

Kachhari Chowk,

Raipur (MP)

...Management

AWARD

Passed on this 1st Day of May 2012

1. The Government of India, Ministry of Labour vide its Notification No. I-12012/332/95-IR (B-2) dated 9-1-97 has referred the following dispute for adjudication by this tribunal :

"Whether the action of the management of Punjab National Bank in relation to their civic centre branch

in terminating the services of Shri Chandra Prakash Yadu, Farrash-cum-messenger w.e.f. 20-5-94 is legal and justified? If not, to what relief the concerned workman is entitled?"

2. The case of the workman, in short, is that he was appointed as Farrash-cum-Messenger on 19-5-91 and worked continuously on the said post till 30-11-92. He was paid salary on monthly basis by way of vouchers. On 1-12-92 after interview, he was informed that he was made permanent. He worked continuously for four years and all of a sudden he was terminated from services on 20-5-94 without retrenchment compensation. He worked for more than 240 days in a calendar year. The mandatory provision of Section 25 F of the Industrial Dispute Act, 1947 (in short the Act, 1947) is violated. It is stated that after his termination, one Smt. Sumitra Bai was appointed in his place and therefore the management had also violated the principle of "first come last go". Thus the provision of Section 25(g) and (h) of the Act 1947 and Rule 76 of the Industrial Dispute (Gen) Rules, 1957 are also violated. It is submitted that the termination be set-aside and the workman be reinstated with full back wages and consequential benefits.

3. The management appeared in the reference case. The case of the management, inter alia, is that Shri Chandra Prakash Yadu was never appointed as Farrash-Cum-Messenger at Bhilai Branch of Punjab National Bank. In fact, he was running a canteen and served tea to staff members. There was no employer and employee relationship between the Bank and Shri Yadu. He was not a workman as defined in the Act, 1947. The further case of the management is that Shri Chandra Prakash Yadu was engaged as casual worker for a period from 19-5-91 to 5-12-91 on wages of Rs. 10 per day.

Again from December, 1992 to 20th May, 1994 he was engaged for cleaning the branch premises intermittently. It is stated that there was no continuity in service and he was not engaged in the month of June 1993, July 1993, August 1993,

October, 1993 and December, 1993. He had already compensated as per agreed rate. His case comes under the provision of Section 2(oo)(bb) of the Act, 1947 and therefore he was not said to have been retrenched and the provisions of Sections 25F, 25G and 25H are not attracted. The principle of "first come first go" is not applicable. It is submitted that the claim of the workman is not tenable and is fit to be dismissed.

4. On the basis of pleadings of both the parties, the following issues are framed

- I. Whether Shri Chandra Prakash Yadu was a workman and there was relationship of employer

and employee between the management and Shri Yadu.

- II. Whether the action of the management in terminating the services of Shri Yadu w.e.f. 20-5-94 is legal and justified?
- III. To what relief the workman is entitled?

5. Issue No. I

Workman is defined in Section 2(s) of the Act, 1947 which runs as follows:—

"workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute".

It is an admitted case that Shri Chandra Prakash Yadu was engaged for casual work and subsequently for cleaning the branch premises on payment. He had been subsequently disengaged or terminated as such dispute arose. Thus he comes under the definition of "Workman" under Section 2(s) of the Act, 1947.

6. Another point raised is as to whether relationship of employer and employee existed between them or not. It is an admitted fact that the workman was engaged by the management from 19-5-91 to 5-12-92 intermittently and was paid wages. This shows that the relationship of employer and employee was established between them. The workman Shri Chandra Prakash Yadu has stated in his evidence that he was appointed as Farrash-cum-messenger on 19-5-1991 and was terminated on 30-11-1992. Again he was appointed as Sweeper-cum-cleaner on 1-12-92. This shows that there was complete control of the management on him and the relationship of employer and employee was in existence.

This issue is, thus, decided in favour of the workman and against the management.

7. Issue No. II

Now the important question is as to whether the termination of the workman was legal and justified. According to the workman, he was appointed on 19-5-91 as Farrash-cum-messenger and worked continuously till 30-11-92 and was paid salary on monthly basis. Thereafter again he was interviewed on 1-12-1992 and made permanent and worked continuously till 20-5-94 when he was terminated suddenly without notice and without payment of compensation in contravention of Section 25-F of the Act. On the other hand, the management has contended that he was never appointed as Farrash-cum-messenger rather he was engaged as casual worker for a period from 19-5-91 to 5-12-92 on Rs. 10 per day. Again he was engaged for cleaning branch premises from December 1992 to 20th

May 1994 intermittently. He was not engaged in the months of June 93, July 93, August 93, October 93 and December 93. He was compensated as per agreed rate. His case comes under Section 2(oo)(bb) of the Act and therefore he was not said to be a retrenched employee and the provision of Section 25-F of the Act is not applicable.

8. The workman has examined oral and documentary evidence. The management had not cross-examined the workman and the right to cross-examine the workman of the management was closed on 28-2-2006 as sufficient opportunity was granted to the management. The management filed photocopy of the vouchers which are admitted by the workman but has not adduced any oral evidence in spite of sufficient time given to the management.

9. It is clear from the pleadings of the parties that the following facts are admitted—

- (i) The workman was engaged from 19-5-91 to 20-5-94 but the management says that he was not engaged in the months of June 93, July 93, August 93, October, 93 and December, 93 in the said above period.
- (ii) There was no pleading of appointment on contract.
- (iii) He was engaged subsequently for cleaning the premises of the Bank.
- (iv) He was not given any notice nor any retrenchment compensation before termination from services.

10. The workman has adduced oral and documentary evidence. Exhibit W/1 is the letter dated 26-12-93 issued by the Manager of the Bank. This document is admitted by the management. This document shows that the workman was engaged as part time cleaner-cum-sweeper and was terminated w.e.f. 26-2-83. This shows that there was no contract of employment. Moreover the pleading of the management shows that except June 93, July 93, August 93, Oct., 93 and Dec., 93, the workman was in continuous service till 20th May 1994. Exhibit W/2 is another letter of the management dtd. 31-5-93 whereby the service of the workman was again terminated. This letter does not show that his service was on contract basis as such his service was terminated on expiry of the contract rather it shows that his service was no longer required. The management has also admitted this letter. It looks probable that the service was temporary as such it was terminated but the pleading of the management shows that the workman was in continuous employment except few months as has been stated above. Moreover it appears that he was issued letters of engagement on piece meal to violate the provision of labour law though he was working continuously.

11. Exhibit W/3 is another letter dated 1-10-93 of the Manager of the Bank. This letter shows that the workman was also engaged in the month of October, 1993 on monthly basis in the same capacity as Sweeper cum Farash on 3/4th wages. This document is also admitted by the management. This document falsify the pleading of

the management that the workman was not engaged in October 1993. Thus the case of the management appears to be not reliable that the workman was not engaged in the months of June 93, July 93, Aug. 93, Oct., 93 and Dec., 93 when the workman has established that he was also engaged in Oct. 93. It also shows that the management has not come in Court with fair case. Exhibit W-4 is another letter dtd. 1-11-93 of the Manager of the Bank. This is filed to show that he was also engaged part time sweeper cleaner in the month of Nov., 93 on monthly basis. This letter is also admitted by the management. Thus the documentary evidence shows that the story of the workman about continuous employment by the management Bank till 20th May, 1994 appears to be believable. As there was no pleading of the management that he was employed on casual basis rather he was employed on casual basis. Thus the provision of Section 2(oo)(bb) of the Act, 1947 is not attracted in the case. He is said to be a retrenched employee.

12. The workman is also examined in the case. The workman Shri Chandra Prakash Yadu has supported his case. He has stated that he was appointed on 19-5-91 as Farash-cum-messenger and worked till 30-11-92. Then again he was appointed on 1-12-92 as sweeper-cum-cleaner and worked regularly till 20-5-94. Thereafter his services were terminated. In support of his engagement he has filed documents which have already been discussed earlier. He has further stated that he worked 240 days in each calendar year and worked continuously for four years. His evidence is un rebutted. The management has failed to cross-examine him. There is no reason to disbelieve the evidence of the workman. He has further stated that he was terminated without notice and without any retrenchment compensation. His evidence clearly shows that he shall be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date with termination as has been provided in Section 25 B(2) of the Act, 1947. Since admittedly no notice was given nor retrenchment compensation was paid by the management, his termination is illegal and unjustified under the payment of Section 25 F of the Act, 1947.

13. The management had filed photocopies of the documents. Out of those documents, the workman has admitted photocopies of 28 vouchers filed by the management which are marked as Exhibit M/1. Other documents are not proved by the management. The vouchers show that the workman was paid salary on monthly basis and not as per alleged agreed rate. This fact also corroborates that he was not on contract basis rather he was employed temporarily on monthly basis till termination. Moreover it also corroborates the case of the workman that he was paid on monthly basis. Admittedly no notice nor any retrenchment compensation was paid before termination. It appears and establishes from the evidence discussed above that he was in continuous

service, then his termination is illegal and unjustified without compliance of the provision of Section 25-F of the Act, 1947. Thus it is evident that the action of the management in terminating the services of the workman w.e.f. 20-4-94 is not legal and justified. This issue is decided in favour of the workman and against the management.

14. Issue No. III

The workman has stated in his evidence that after termination, he is not in gainful employment and is unemployed. His evidence is un rebutted. I do not find any reason to disbelieve the workman. As such on the basis of discussion made above, it is evident that the action of the management in terminating his services without complying the provision of Section 25 F of the Act, 1947 is illegal and unjustified and he was not in gainful employment after termination. Under the circumstances the management is directed to reinstate the workman from the date of termination with full back wages. Accordingly the reference is answered.

15. In the result, the award is passed without any order to costs.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2338.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-I, नई दिल्ली के पंचाट (संदर्भ संख्या 217/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-5-2012 को प्राप्त हुआ था।

[सं. एल-12012/18/2008-आई आर (बी II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2338.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.217/2011) of the Central Government Industrial Tribunal-cum-Labour Court-I, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 23-5-2012.

[No. L-12012/18/2008-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, KARKARDOOMA COURTS
COMPLEX, DELHI

I. D. No. 217/2011

Shri Vinod Kumar S/o Sh. Sheesh Pal,
C-240, Parparganj,
Delhi-110092.

...Workman

Versus

The Chief Manager,
Punjab National Bank,
No.7, Bhikaji Cama Place,
New Delhi-110066.

...Managements

AWARD

Punjab National Bank (in short the bank) opened a branch at Anand Vihar, on 26-11-1997. Shri Vinod Kumar, the claimant, was engaged as a part time sweeper in the said branch of the bank, since the date of its inception. He served the bank till 25-7-2006. He claimed that he was entitled to wages at ½ scale of the wages for subordinate staff from year 2000 and onwards. It led the bank to dispense with his services on 25-7-2006. He approached a trade union and demand for his reinstatement in services was raised. Since demand was not conceded to, an industrial dispute was raised before the Conciliation Officer. When conciliation proceedings ended into a failure, the appropriate Government referred the dispute to the Central Government Industrial Tribunal No.11, New Delhi for adjudication, vide order No.L-12012/18/2008-IR (B-II), New Delhi, dated 21-5-2008, with following terms:

“Whether the action of Management of Punjab National Bank in terminating the services of Shri Vinod Kumar, part time Sweeper w.e.f. 25-7-2006 is legal and justified? If not to what relief the concerned workman is entitled?”

2. Claim statement was filed by Shri Vinod Kumar pleading therein that he was serving Anand Vihar branch of the bank as a sweeper since 26-11-1997. He worked continuously with that branch and rendered more than 240 days services in each calendar year. In the year 2000, he was entitled to ½ wages of scale pay, applicable to subordinate staff. He asked for enhancement of his wages, in accordance with the area of the branch cleaned by him. His services were abruptly terminated by the bank on 25-7-2006, in an illegal manner. He raised a demand for reinstatement, which was not conceded to. He claims that he may be reinstated in the services of the bank, declaring termination of his services as illegal and unjustified.

3. Claims was demurred by the bank pleading that the claimant was engaged on casual /temporary basis for cleaning its Anand Vihar branch. He was engaged as a stop gap arrangement. There was no relationship of employer and employee between the bank and Shri Vinod Kumar. He was not a workman. His engagement was purely on casual basis. He was compensated for the work rendered by him. Since he was not appointed in terms of relevant rules, no right was created in his favour for continuity in service. His discontinuance would not amount to retrenchment within the meaning of Section 2(oo)(bb) of the Industrial Disputes Act, 1947 (in short the Act). The bank entered into a conciliation settlement dated 7-5-1984 in the matter of fixation of wages of part time sweepers. As per provisions of the said settlement, vacancy of part time sweeper are to be identified, keeping in view the sweeping area of the concerned office and hours of work per week to be put in by a part time sweeper. A part time sweeper shall be eligible for one half, three fourth, or full wages, in accordance with the area he swept. A vacancy of a part time sweeper is to be filled on seniority basis, determined on conversion of service rendered by him at 1/2 or 3/4 scale wages into full time services. This procedure is to be followed unless Thikana system in vogue at a particular area. Recruitment of part time / full time sweeper shall be as per eligibility criteria laid down by the bank from time to time. Since Shri Vinod Kumar was not recruited as per recruitment process for permanent appointment, his discontinuance from services would not be retrenchment under the Act. It has been asserted that provision of section 25F of the Act were not violated. The claimant is not entitled to relief of reinstatement.

4. Vide order No.Z-22019/6/2007-IR(C-II), New Delhi dated 30-3-2011, the appropriate Government transferred the matter to this Tribunal for adjudication.

5. Claimant entered the witness box to substantiate facts pleaded in the claim statement. Miss Rimi Ray, Manager (HRD), was examined on behalf of the bank. No other witness was examined by either of the parties.

6. Arguments were heard at the bar. Shri Harish Sharma, authorized representative, advanced arguments on behalf of the claimant. Shri Rajat Arora, authorised representative, assisted by Ms. Rimi Ray raised his submissions on behalf of the bank. Written arguments were also filed by the parties. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:-

7. In his affidavit Ex.WW-1/A, tendered as evidence, the claimant swears that he was appointed as part time sweeper at Anand Vihar branch of the bank on 26-11-1997. He discharged his duties honestly and sincerely. He was given enhanced pay in terms of bipartite settlements. He worked for about 9 years with the bank. He made

representation dated 29-3-2004, seeking enhanced wages @ one half of the scale pay, admissible to a subordinate staff. Letters dated 2-9-2003, 1-7-2004 and 17-7-2004 were written. Suddenly on 25-7-2006 he was told not to attend to his duties. Procedure provided in Section 25F of the Act was not followed and his removal from service is illegal. During the course of his cross-examination, he concedes that he had not moved any application seeking employment with the bank. No advertisement was given to public at large, when he was recruited as a part time sweeper. He asked the manager to employ him, who engaged him as a part time sweeper. He projects that no appointment letter is issued to a part time sweeper.

8. Ms. Rimi Ray swears in affidavit Ex.MW1/A, tendered as evidence, that Vinod Kumar was engaged on temporary basis to clean Anand Vihar branch of the bank. His engagement was as a stop gap arrangement. He was paid for the days, he actually worked. The bank had entered into a settlement dated 7-5-1984 in respect of matter of fixation of wages of part time sweepers and related matters. The said settlement prescribes that recruitment of part time/ full time sweepers shall be as per eligibility criteria laid down by the bank from time to time. Circular No.4 of 2011 dated 2-4-2011 prescribed eligibility criteria for recruitment of part time sweepers. The claimant was never in the employment of the bank, since he was engaged on casual basis. No right accrued in his favour. During the course of her cross-examination, she concedes that Anand Vihar branch was opened in 1997. She admits that the claimant was engaged in that branch on 26-11-1997. No seniority list was there on 26-11-1997, when the claimant was engaged in Anand Vihar branch of the bank. He was engaged against a vacant post. She further concedes that the claimant had worked in Anand Vihar branch upto 25-7-2006.

9. Whether relationship of employer and employee existed between the parties? For an answer to this proposition, it is to be appreciated as to how a contract of service is entered into. The relationship of employer and employee is constituted by a contract, express or implied between employer and employee. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. A contract of employment may be inferred from the conduct which goes to show that such a contract was intended although never expressed and when there has, in fact, been employment of the kind usually performed by the employees. Any such inference, however, is open to rebuttal as by showing that the relation between the parties concerned was on a charitable footing or the parties were relations or partners or were directors of a limited company which employed no staff. While the employee, at the time, when his services were engaged, need not have known the identity of his employer, there must have been some act or contract by which the parties recognized one another as master or servant.

10. As is evident, out of facts unfolded by Shri Vinod Kumar and reaffirmed by Ms. Rimi Ray, claimant was engaged as a part time sweeper on 26-11-1997. Ms. Rimi Ray concedes that he was paid one third of the scale wages applicable to a subordinate staff. It is also not disputed that the claimant worked at Anand Vihar branch of the bank upto 25-7-2006. Therefore out of facts unfolded by the claimant and those conceded to by Ms. Ray, it is evident that on 26-11-1997, the bank established relationship of employer and employee between it and the claimant. The claimant was engaged as a part time sweeper. Para 508 of Shastri award classifies employees as: (a) permanent employees, (b) probationers, (c) temporary employees, (d) part time employees. Part time employee has been defined to mean "an employee who does not or is not required to work for the full period for which an employee is ordinarily required to work and who is paid on the basis that he is or may be engaged in doing work elsewhere." Therefore, it is emerging over the record that the bank engages part time employees also. Such part time employees are subject to discipline of the bank, when they render services as per the award and settlement. Consequently it does not lie in the mouth of the bank that the claimant was not its employee. Shri Vinod Kumar was an employee of the bank, who was engaged on part time basis.

11. Much hue and cry has been raised by Shri Arora agitating that the claimant was not engaged in accordance with the recruitment rules. Assailing the claim, the bank projects that since claimant was engaged dehors recruitment rules, he cannot agitate for reinstatement and regularization of his services. Shri Arora had argued that word "regularisation" connotes and is calculated to condone any procedural irregularity in the process of making appointment and meant to cure only such irregularities which are attributable to methodology followed in making appointments. According to him regularization cannot and does not relate to permanance on a post. When appointment of claimant was in infraction of statutory rules that illegality cannot be rectified or regularized, argued Shri Arora. Non compliance with the rules, in the matter of appointment goes to the root of the matter. Therefore, claim projected by the claimant cannot be answered in his favour, concludes Shri Arora.

12. To answer the proposition raised by Shri Arora, it is expedient to know the procedure, following which a part time employee may be employed. As noted above, Shastri Award gives classification of employees. Para 508 of the Award commands that employees shall be classified as : (a) permanent employees, (b) probationers, (c) temporary employees, (d) part time employees. Part time employee has been defined to mean "an employee who does not or is not required to work for the full period for which an employee is ordinarily required to work and who is paid on the basis that he is or may be engaged in doing work elsewhere".

13. Paragraph 493 of Shastri award projects that bank(s) in their own interest and, in case of a reasonable number of posts, advertise them and then make appointments after passing the candidates through such tests as they may consider necessary. The bank(s) should also maintain registers of candidates in which their names, ages, qualifications, previous experience, if any, special merits and recommendations should be entered and such registers should be revised periodically and kept upto date. Such registers should also have the names of retrenched and temporary employees whose work has been found to be satisfactory. The award nowhere provides as to how a part time employee would be recruited.

14. Desai award directs that a minimum of 1/3rd of the appropriate rate of pay and allowances should be given to part time employees, if such part time employee work for not less than 7 hours per week. Minima of wages have been prescribed for them, as detailed above. Desai Award is also silent as to under what manner a part time employee would be recruited by the bank(s).

15. First Bipartite Settlement lays down in detail as to how a part time employee would be paid. In clause 4.5 it has been provided that in supersession of paragraph 5.191 of the Desai Award, part time workman shall be entitled to graduated incremental pay scales relating to their working hours, as follows:

- (a) Part time workman other than those belonging to subordinate staff shall be paid 1/3rd of the basic pay, special allowance, house rent allowance and other allowance, if any and D.A. and shall also be entitled to 1/3rd of the annual increments, payable under this settlement to full time workman provided that the total working hours of such part time workmen shall not exceed 12 per week.
- (b) Part time workmen who are members of subordinate staff shall (subject to clause 20.5) be paid - if their normal working hours per week are :
 - (1) Up to 3 hours at banks discretion.
 - (2) More than three hours but less than six hours at banks discretion but minimum Rs.15 p.m.
 - (3) 6 hours to 13 hours 1/3rd of the scale wages with proportionate annual increment.
 - (4) More than 13 to 19 hours 1/2 of the scale wages with proportionate annual increment
 - (5) More than 19 hours to 29 hours 3/4th of the scale wages with proportionate annual increment.
 - (6) Beyond 29 hours - Full scale wages.

16. Second Bipartite Settlement also speaks about the wages of part time workman. Clause 9 of the said settlement projects that in supersession of clauses 4.5 and 20.5 of the Bipartite Settlement dated 19th October, 1966, part time workman shall be entitled to graduated incremental pay scales related to their work hours, as follows:-

(a) Part timeworkman other than those belonging to the subordinate staff shall be paid 1/3rd of the scale wages and shall be entitled to 1/3 of the annual increment, payable under the settlement to full time workman provided that the total working hours of such part time work shall not exceed 12 per week.

(b) Part time workmen who are members of subordinate staff shall be paid :if their normal total working hours per week are:

- | | |
|---|---|
| (1) Up to 3 hours | at bank's discretion. |
| (2) More than three hours but less than six hours | at banks discretion but with a minimum Rs. 25 p.m. |
| (3) 6 hours to 13 hours | 1/3rd of the scale wages with proportionate annual increment. |
| (4) More than 13 to 19 hours | 1/2 of the scale wages with proportionate annual increment |
| (5) More than 19 hours to 29 hours | 3/4th of the scale wages with proportionate annual increment. |
| (6) Beyond 29 hours - | Full scale wages. |

17. In third Bipartite Settlement agreement was reached to the effect that permanent part time employees who are required to work for more than six hours a week will be eligible for provident fund and gratuity. Part time employee, who is required to work over 3 hours but below six hours a week, shall be paid Rs. 60 PM w.e.f. 1st of September 1998. It was further agreed that subject to banks recruitment rules, if any, part time employees in the subordinate cadre will be given a preference for filling full time vacancies in the same cadre, other things being equal.

18. Clause 18.1 of the Fifth Bipartite settlement projects that codified service conditions of part-time employees with such modifications, as are considered necessary, as follows:—

Subordinate Staff

If their normal total working hours per week are:

- | | |
|-----------------------|--|
| (1) Upto 3 hours | at banks discretion with a minimum of Rs. 60 p.m. |
| (2) More than 3 hours | at bank's discretion but with a minimum Rs. 175 p.m. |

- | | |
|------------------------------------|--|
| (3) 6 hours to 13 hours | One third of the scale wages with proportionate annual increment. |
| (4) More than 13 hours to 19 hours | One half of the scale wages with proportionate annual increment |
| (5) More than 19 hours to 29 hours | Three fourth of the scale wages with proportionate annual increment. |
| (6) Beyond 29 hours - | Full scale wages. |

'Scale wages' are defined to mean basic pay, city compensatory allowance (as per Clause 6), if any, special/ house rent/other allowance, if any, and dearness allowance payable under this Settlement to full time workmen.

Part-time employees not drawing scale wages shall be eligible for only fixed monthly payment made to them by the bank. Other part-time employees drawing scale wages shall get only such benefits as are specifically provided hereunder :—

(a) Permanent part-time employees drawing scale wages are eligible for leave, medical aid and uniforms.

(b) Permanent part-time employees drawing scale wages are eligible for Provident Fund with effect from 1-9-1978.

(c) Permanent part-time employees drawing scale wages in banks other than in State Bank of India will be eligible for Gratuity. Those in State Bank of India, will however be eligible for Gratuity or Pension as per rules.

(d) Permanent part-time employees drawing scale wages shall be eligible for leave fare concession and leave encashment on pro-rata basis with effect from 1-4-89.

19. In Supplementary Settlement dated 28th Nov. 1997, it was agreed that part time employees who are members of the subordinate staff and whose normal total working hours per week are as given below shall be paid consolidated wages :

1. Part-time Employees

In partial modification of Clause 18(1) of Memorandum of Settlement dated 10th April, 1989, part-time employees who are members of the subordinate staff, whose normal total working hours per week are as given below shall be paid consolidated wages :

- | | |
|---|----------------|
| (a) From 1-11-1992 to 31-10-1994 upto 3 hours | = Rs. 130 p.m. |
| More than 3 hours but less than 6 hours | = Rs. 375 p.m. |

- (v) While no written test is normally necessary for selection of sub-staff, the bank may devise a procedure to ascertain the candidate's ability to read and write. Interview should be the main process for selection.

(vi) As the procedure for selection of sub-staff through Employment Exchange is relatively simple, long waiting lists should not be prepared.

“20. Part Time Employees

(a) Upto 3 hours	: at banks discretion with a minimum of Rs.450 p.m.
(b) More than 3 hours but less than 6 hours	: at banks discretion with a minimum of Rs.740 p.m.

(ii) In partial modification of Clause 18.2 of the Bipartite Settlement dated 10th April, 1989, with effect from 1st November, 1999, part time employees drawing scale wages shall also be eligible for reimbursement of hospitalisation expenses on pro-rata basis.

21. Except the amount of wages payable to a part-time employee, in none of the awards and settlements, referred above, mode or method of recruitment of part-time employee(s) was ever provided for. Shri Arora has not been able to place recruitment rules for recruitment of part-time sweepers, which are being followed by the bank. There is a candid admission by the bank that no recruitment rules are there for recruitment of part-time sweeper(s). Left in lurch, the Tribunal had to make efforts to ascertain as to whether the bank(s) are bound to follow some guidelines for recruitment of part-time employee(s). In that bid, the Tribunal could lay its hands on guidelines formulated by Department of Economic Affairs (Banking Division), Ministry of Finance, Govt. of India, New Delhi. Relevant extract of those guidelines provides as follows:

(i) Recruitment to subordinate staff should be on a local basis.

(ii) The maximum age for sub-staff is to be fixed at 25 with suitable relaxation for SC/ST Candidates.

(iii) Candidates having middle school as the minimum educational qualification should be considered for appointment as sub-staff.

(iv) Applications sponsored by the Employment Exchanges and such other applications that the bank may receive directly could form the basis for selection as sub-staff.

22. Except the guideline's detailed above, no recruitment procedure in respect of part time employee(s) could reach my hands. Question for consideration comes as to whether recruitment of a part time employee would be subjected to the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. (in short the Employment Exchange Act). Clause (i) of section 2 of the Employment Exchange Act defines unskilled office work. It provides that unskilled office work means work done in establishment by any of the following categories of employees, namely, (i) daftry, (ii) jamadar, probationers and peon., (iii) dusting man and farash (iv) bundle or record lifter (v) process server (vi) watchman (vii) sweeper (viii) any other employees doing any routine or unskilled work/ the Central Government may by notification in the official gazette declare to be unskilled this work.

23. Section 3 of the Employment Exchange Act makes it clear that the said Act, does not apply in relation to vacancies—(a) in any employment in agricultural including horticulture in any establishment in private sector other than employment as agricultural or farm machinery operatives, (b) under any employment in domestic service, (c) under any employment the total duration of which is less than three months, (d) in any employment to do unskilled office work, (e) in another employment connected with the staff of parliament. Therefore, it is evident that for recruitment of a sweeper, not to talk of a part time sweeper, provisions of the Employment Exchange Act are not applicable. The bank may recruit a part time sweeper locally, without advertising vacancy in a newspapers or otherwise. Guidelines referred above, leaves a room for the bank to receive an application directly from a candidate for recruitment as sub-staff. No obligation is cast on the bank to insist for names of the candidates being sponsored by the employment exchange. For a work, duration of which is less than 3 hours a week, a candidate would not get his name registered with an employment exchange. It is not expected of the bank to make advertisement of such vacancies for public at large, since such work would be performed by persons, who can pull on with meager income. Therefore, it is evident that for recruitment of part time sweeper discretion vests with bank to engage such persons from near vicinity, where the branch is located where work exists. Therefore, it is emerging over the record that part time sweeper(s) can be engaged by the bank in its respective branches, as per exigencies. When bank makes engagement of part time sweeper(s), as per exigency, without getting names of the candidates sponsored by an

employment-exchange, which mode of recruitment is recognized by the guidelines referred above, it does not lie in its mouth to assert that the claimant was engaged dehors the rules. In such a situation contention of Shri Arora, to the effect that the claimant was engaged in violation of rules is not entitled for reinstatement and regularization of his services, is unfounded.

24. Ex. WW-1/15 is a letter written by Senior Manager, Anand Vihar branch to the Regional Office of the bank. Contents of this letter project that in 1997 claimant worked for 36 days, in 1998 to 2003, he worked for 365 days in each calendar year and in 2004 he worked for 1 day only. He worked for 2227 days with the bank, as on the date when Ex. WW-1/15 was written. Therefore, this document makes it clear that the claimant rendered continuous service of more than 240 days in 1998 to 2003. WW-1/20 is the written statement filed by the bank before the Conciliation Officer. It was conceded therein that the claimant was working with the bank till 25-7-2006, the date when the vacancy was filled by way of posting Smt. Daya in the said branch. Thus out of contents of Ex. WW-1/20, it is emerging over the record that the claimant was continuously working with the bank since the date of his engagement.

25. It is highlighted in Ex. WW-1/20 that initially the area of Anand Vihar branch was 1956 Sq. ft., which was increased to a sweeping area of 3150 Sq. ft. in August, 2000. Letter Ex. WW-1/16, written by the Senior Manager on 6-12-2004, highlights that the claimant was sweeping the aforesaid area in the branch till that date. The contents of this letter bring it over the record that the claimant requested for enhancement of his wages, since sweeping area of the branch increased. Thus it is emerging over the record that when the claimant demanded payment @ 1/2 of the scale wages, it annoyed the bank. Services of the claimant were dispensed with on 24-7-2006.

26. Claimant projects that the provisions of section 25F of the Act were not followed. Ms. Ray is silent over the matter. She nowhere deposes that one month notice or wages in lieu thereof was paid to the claimant, besides retrenchment compensation at the time of disengagement of his service. Section 25F of the Act postulates three conditions to be fulfilled by an employer for effecting a valid retrenchment namely:— (a) one month's notice in writing indicating reasons for retrenchment or wages in lieu of such notice, (b) payment of compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months, and (c) notice to the appropriate Government in the prescribed manner. Negative language used in section 25F of the Act, imposes a mandatory duty on the employer which is a condition precedent to retrenchment of workman. Contravention of mandatory requirement of the section would invalidate retrenchment and render it void ab initio. Reference can be made to the precedents in *Aura Engineering (Pvt.) Ltd., Nasik* (1992 Lab I.C. 1364) and

Uttar Regional Imitation Diamond Manufacturing Industrial Co-op. Society Ltd. [1993 (II) LLJ 174].

• 27. Bank places reliance on Ex. MW-1/3, in order to establish as to what were the criteria for recruitment of a part time sweeper. I am afraid Ex. MW-1/3 can help the cause of the bank, since it was issued on 2-4-2011. Ex post-facto criteria for recruitment of part time sweeper will not espouse the cause of the bank. On the date when services of the claimant were disengaged, a part time sweeper could be engaged by the bank locally. Engagement of the claimant was in consonance with the rules applicable to him, when he was initially engaged. Therefore, contention of the bank that since the claimant was engaged dehors the rules, hence he is not entitled for continuity in service, is unfounded. The claimant was engaged in consonance with the rules and bank was not justified in discontinuance of his services.

28. Since the disengagement of the claimant was violative of provisions of Section 25F of the Act, termination of his services is void ab-initio. His engagement was in consonance with the rules and the bank cannot agitate that no right of reinstatement in service has accrued in his favour. Ex. MW-1/2 projects that date of birth of the claimant is 15-5-1977. On the date of his initial engagement, the claimant was 20 years 6 months and 11 days old. Therefore, on that date he was eligible for engagement as a part time sweeper. Engagement of a part-time sweeper locally is not violative of the rules. When mandatory requirements of one months notice or pay in lieu thereof and payment of retrenchment compensation were not complied with, the retrenchment of the claimant cannot be upheld. Consequently I am constrained to conclude that retrenchment of the claimant is violative of the provision of section 25F of the Act. Thus it is evident that the claimant could project a case for his reinstatement in the service of the bank.

29. No evidence has been brought on the record by the claimant to establish that he is not gainfully employed, since the date of termination of his services. It is also a matter of common knowledge that a sweeper can get employment in the area where he resides. In such a situation I do not find it to be a case where full back wages is to be awarded to the claimant from the date of termination of his services till the date of his reinstatement. The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of wages which may be awarded to the claimant. In *S.S. Shetty* [1957 (II) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

“The industrial Tribunal would have to take into account the terms and conditions of employment.

the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunal in the event of industrial disputes arising between the parties in future..... In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

30. Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con".

31. A Divisional Bench of the Patna High Court in *B.Choudhary* (1983) Lab. I. 1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (vii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab.I.C.1887).

32. In *Assam Oil Co. Ltd.* (1960 (1) LLJ 587) the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* (1966 (1) LLJ 398) the amount of compensation equivalent to two year salary of the employee awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took

into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K.Roy* (1970 (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* (1962 (II) LLJ 483) the Court converted the award of reinstatement into compensation of a sum of Rs.50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P.Bhandari* (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K.Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In *Naval Kishor* (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In *Sant Rai* [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 lab.I.C.1225) a compensation of Rs.21ac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 lab.I.C.107) a compensation of Rs.65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V. V. Rao* (1991 lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

33. Above standards are kept in mind, to calculate back wages. for the claimant. Since the claimant was 20 years and 6 months old on the date of his engagement and had rendered about nine years of temporary services with the bank, 20% of back wages, to be calculated keeping his wages as 1/3 of initial scale of pay for a subordinate staff, would meet the ends of justice.

34. In view of the foregoing discussion, it is held that the claimant could establish that his termination from service on 25-7-2006 is neither legal nor justified. His engagement was in consonance with the rules and as such his reinstatement cannot be denied. Consequently, it is ordered that the bank shall reinstate the claimant in its service with continuity and 20% of back wages, to be calculated keeping his wages as 1/3rd of initial scale of pay, applicable to a subordinate staff. An award is accordingly passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 15-5-2012

नई दिल्ली, 15 जून, 2012

AWARD

क्र.अ. 2339.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 42/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-5-2012 को प्राप्त हुआ था।

[सं. एल-12011/41/2010-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S. O. 2339.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.42/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Bank and their workmen, which was received by the Central Government on 31-5-2012.

[No. L-12011/41/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Friday, the 25th May, 2012

Present: A. N. JANARDANAN, Presiding Officer**Industrial Dispute No. 42/2010**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their Workman)

Between

The General Secretary : 1st Party/Petitioner
Indian Bank Employees' Union
6, Moore Street, Mannady Corner
Chennai-600001

Vs.

The General Manager : 2nd Party/Respondent
Indian Bank, Head Office
Rajaji Salai
Chennai-600001

Appearance:

For the 1st Party/ : Sri J. Thomas Jayaprabhakaran
Petitioner Authorized Representative

For the 2nd Party/ : M/s. T. S. Gopalan & Co.,
Management Advocates

The Central Government, Ministry of Labour vide its Order No. L-12011/41/2010-IR(B-II) dated 26-11-2010 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management of Indian Bank, Chennai in denying the promotion of Smt. R. Rajeswari, SR No. 23012, Clerk/Shroff of Red Hills Branch with effect from 11-2-2005 is legal and justified? What relief the workman is entitled for?"

2. After the receipt of Industrial Dispute, this Tribunal has numbered it as ID 42/2010 and issued notices to both sides. Both parties entered appearance through Authorized Representative, Both viz. J. Thomas Jayaprabhakaran and T.S. Gopalan respectively, and filed their Claim, Counter and Rejoinder Statement as the case may be.

3. The case in the Claim Statement briefly reads is as follows:

Respondent unjustly and with pre-conceived notion denied the eligible promotion from Clerical Cadre to Officer Cadre JMG Scale-I under merit channel to R. Rajeshwari, Clerk/Shroff of Red Hills Branch. Representations against the same having failed the ID was raised which also having failed the reference is occasioned. The promotion was governed by settlement dated 20-10-2003. In terms of settlement 50% of the declared vacancies in Officer cadre will be filled-up by internal promotion from Clerical Cadre through merit channel after written test and interview by issuing circulars. Marks will be allocated at the rate of 90% for the written test and 10% for the performance appraisal. For General Category candidates qualifying mark shall be 60% both put together. Merit list will be drawn strictly on the basis of total marks. In the new settlement dated 26-2-2010 retaining the earlier provisions the percentage is reduced to 40% from 50% for merit channel. Employees guilty of gross misconduct and punished with stoppage of increment/brought down to a lower stage shall not be eligible for promotion during the period of punishment. Those punished with less than stoppage of increment/brought down to a lower stage shall be eligible to be considered in the next promotion. Those against whom disciplinary proceedings are pending for gross misconduct or court cases are pending shall be eligible to appear for the test as per the settlement. If they are found eligible otherwise for promotion after going through the promotion process the promotion would be kept in a sealed cover. If the employee is exonerated of the charges of gross misconduct and in the event of suspension period being treated as one on duty sealed cover shall be opened and acted upon. In 2004 as per circular Smt. R. Rajeshwari also applied and she took up the promotion test on 26-12-2004. Results were announced on 9-3-2005. Though 925

employees were promoted, her name did not find a place. Her name was not there in the list of unsuccessful candidates also. Then it was concluded that her promotion was kept in sealed cover. Prior to the test she was issued a memo dated 26-8-2004 to explain for not affixing the "Cash Paid" seal on the withdrawal slip payment of which was made by her for Rs. 25,000 on 3-7-2004 which the customer had disputed the withdrawal. She explained in writing on 2-9-2004 that there is no possibility of duplication in payment for failure to affix the Cash Paid seal since the payment details are fed into the Computer System itself. The above slip has in no way contributed to the fraud on the Bank. One V. Muthuperumal, Sub-Staff had forged the signature of the party and withdrawn the said Rs. 25,000. He managed to submit a forged withdrawal slip and obtained token. The slip was passed for payment by the authorized official and was sent to the Cashier, then Smt. R. Rajeshwari who effected the payment. She acted only as per the procedure without any lapse on her part. In spite of her representation regarding her promotion status, there being no response Union represented and explained that the Bank having not initiated any disciplinary proceedings against her except calling for an explanation through a Memo withholding her promotion is not justified, which was also not responded. After the result of the test was released in January 2005 she was issued a Show Cause Memo dated 2-9-2006 alleging neglect of work and negligence in performing duties under Minor Misconduct-Clause-7(c). In her explanation dated 18-9-2006 she denied to be negligent. By 24-11-2006 communication of censure was imposed under Clause-8(a) of Minor Misconduct. Union reiterated that she was very much entitled to the promotion at any cost. Apex Court has held in UCO BANK's CASE that "departmental proceedings are not initiated merely by issuance of a Show Cause Notice. It is initiated only when a Charge Sheet is issued". In the case of Rajeshwari only a memo had been pending. To an RTI petition Management replied that the Show Cause Notice was issued and the proceedings were pending at the time of releasing the result and hence the result was kept in sealed cover. She reiterated in appeal to the Appellate Authority, RTI Act that she had no departmental proceedings at the time of release of promotion test in February 2005. Hence it should not have been kept in sealed cover. Show Cause Notice was issued only on 2-9-2006 and not at the time of release of test result. Appellate Authority gave a wrong clarification that an explanation dated 25-8-2004 had been called for from her by the DGM. The same was a mere memo to submit explanation and not to Show Cause signed by DGM and not the designated disciplinary authority. Thus an ID was raised which having failed the reference is occasioned. In the promotion test held in the meantime in March 2010 the employee passed and she got promotion and posting which she accepted without prejudice to pending ID. The action of the Management is illegal and unjustified and in victimization

and unfair labour practice. Sealed cover procedure is not at all against the employee. Even without serving any Charge Sheet she was punished with censure imposed unilaterally, though denied the allegations. Without a reasoning but merely stating that the reply was not satisfactory and not acceptable punishment is imposed. She was never attributed with any gross misconduct. Hence the action is to be held as illegal and unjustified and she is to be ordered to be given promotion with retrospective effect i.e. 9-3-2005 on which 925 employees were promoted under the merit channel as had also taken up the test alongwith those so promoted and also became successful in the result and also directing to fix her salary in the Officer cadre with arrears of pay.

4. Counter Statement averments briefly reads as follows:

When the conduct of an employee on a transaction or otherwise gives rise to likelihood of incapacitating her for continued employment proceedings are initiated for correction or punishment. Employee is given opportunity to vindicate her stand and during the pendency of the process status-quo is maintained. If the employee becomes eligible for promotion during such period proposal for promotion is kept in a sealed cover and if the employee is exonerated promotion is given effect to and if punished promotion is not immediately given effect to. This policy was codified in the circular dated 28-10-2003 which being policy for promotion from Clerical to Officer JMG Scale-I. In 2004 there was a fraudulent withdrawal of Rs. 25,000 in the SB Account of one Mr. Dhanapalan. Explanation was called for and the employee was found guilty of misconduct for her involvement in the said fraudulent withdrawal and on 24-11-2006 she was awarded censure. In other words, she was under the scanner of the bank from 26-8-2004 to 24-11-2006. The entire period should be treated as one during which disciplinary action was pending and the period of disciplinary proceedings cannot be limited to the date of issue of Show Cause Notice and order of punishment. It is this issue which arises for consideration by this Court. Since her conduct was under scrutiny during July 2004 proposal for her promotion was kept in sealed cover. When any employee whose claim for promotion was kept in a sealed cover and ultimately denied promotion or punishment, then such employee would be eligible for promotion after a period of 2 years. In 2010 she was promoted. When promotion is regulated by 28-10-2003 circular so long as the bank acted in a fair and honest manner the action of the bank which might have prejudiced her should not be set at naught. Between 2005 and 2010 a large number of Clerical Staff were promoted to Scale-I, some of whom had even gone to Scale-II. If the claim is to be countenanced and concerned employee is to be deemed to have been promoted in February 2005 it will upset the senior employees and result in prejudice to them, apart from chaos and inconvenience for the administration of

the bank. Therefore, irrespective of the merits of the present claim the claim should not be countenanced. Narrow interpretation cannot be placed on the expression pendency of disciplinary action. It should be taken to mean that when any conduct of an employee comes for an adverse action and when the process is set for the same then the procedure is to keep the proposal under the sealed cover. The claim is to be rejected.

5. Rejoinder averments in a nutshell are as follows :

It is denied that the employee was under the scanner. There is no provision of such scanning. Failure to affix the stamp in no way contributed to the fraud. It is unfair to say that just because the other employees will get upset the employee should be denied her right. No chaos or inconvenience is going to be caused by rectifying the mistake. Justice and fair play demand that every case has to be decided on its own intrinsic merits.

6. Points for consideration are:

- (i) Whether the denial of promotion to Smt. R. Rajeshwari, S. R. No. 23012, Clerk/Shroff of Red Hills Branch w.e.f. 11-2-2005 is legal and justified?
- (ii) To what relief the concerned employee is entitled?

7. Evidence consists of Ex.W1 to Ex.W20 on the petitioner's side and Ex.M1 to Ex.M4 on the respondent's side, all marked on consent with no oral evidence adduced on either side.

Points (i) & (ii)

8. Heard both sides. Perused the records and documents. Both sides keenly argued supporting their respective stand. Here is an employee whose promotion was evidently denied to her with effect from the due date. The said action of the Management is called in question under the reference. While according to the petitioner since the bank had not initiated any disciplinary proceedings against the employee except calling for an explanation by a Memo withholding of the promotion is not justified. The memo was dated 26-8-2004. After the declaration of the result of the test in which she appeared for the promotion post in January 2005 she was issued a Show Cause Memo dated 2-9-2006 alleging neglect of work and negligence in duty as minor misconduct. After her explanation dated 18-9-2006 denying the allegation, on 24-11-2006 she was censured, a punishment for a minor misconduct. It is held by the Supreme Court that departmental proceedings are not initiated merely by issuance of a Show Cause Notice. It is initiated only when a Charge Sheet is issued. Only in the case of those against whom disciplinary proceedings are pending for gross misconduct or court case are pending sealed cover process, that is to say keeping of promotion

process in a sealed cover is contemplated. They are eligible to participate in the test and if they are found eligible otherwise for promotion after going through the promotion process the promotion would be kept in a sealed cover. In the event of the employee being exonerated of the charges of gross misconduct sealed cover shall be opened and acted upon. In the case of the employee only a Show Cause Memo was pending. The Show Cause Notice had not been issued at the time of the release of test result. The memo dated 28-6-2004 was a mere memo calling for explanation and not to Show Cause against disciplinary action. Sealed cover procedure was not contemplated in her case. Punishment of censure was even without any Charge Sheet merely stating that the reply was not satisfactory but without assigning any reason. Of course, for minor charge no enquiry is needed. She was never attributed with any gross misconduct.

9. As against the claim of the employee 'the stand of the Management, as per codified into rule by circular dated 28-10-2003 as promotion policy is that during doubtful conduct of an employee proceedings are initiated for correction or punishment. Status-quo is maintained during the interregnum. In the event of the employee becoming eligible for promotion during such period proposal for the same is kept in a sealed cover. If employee is exonerated then promotion is given effect to and if punished then the promotion is not immediately given effect to. She was under the scanner of the Bank from 28-6-2004 to 24-11-2006. The said period has to be treated as one of the duration of the disciplinary action. Her conduct having been under scrutiny during July 2004 proposal for her promotion was kept in sealed cover, As long as the Bank has acted in a fair and honest manner even if any prejudice is caused to her the action is not to be set aside. If the claim of the employee is approved and she is to be deemed to have been promoted in February 2005 it will affect the senior employees and despite any merit in the claim the same is not to be countenanced. Narrow interpretation cannot be placed on the expression pendency of disciplinary action. In other words when the conduct of an employee invites adverse action and when once the process is set for the same then the procedure is to keep the proposal under sealed cover.

10. The above narrated are the pros and cons of the contentions centering round the issue involved in this dispute. The pertinent question in this context is as to whether the stand adopted by the Management does run contrary to the settled rules and procedure based on the Bipartite Settlement? Sealed cover process discernibly comes into operation only when disciplinary proceedings are initiated for a major misconduct or where court cases are pending. As held by the Apex Court a disciplinary action is said initiated only with the issue of Charge Sheet. In the case on hand no Charge Sheet was issued against the employee. The case of the Management that the employee

had been under the scanner from 26-8-2004 to 24-11-2006 which has been denied out rightly by the petitioner as being not supported by provisions, whether has got any sound edifice in rules or procedure is a matter to be substantiated by the Management but which has not been done. In the absence of any such substantiation the conduct of the Management in doing so relegates to something not formal but what is informal in the matter of treating an employee in regard to promotion accruing in her favour by becoming qualified for the same in every manner including the passing of the required tests. Here what falls for consideration is not whether the Bank has acted in a fair and honest manner but whether the Bank has deprived her of a legal and just claim to which she would be entitled by way of promotion. The question of prejudice to her alone is not to be the criterion for consideration in the context. But the question is whether her legal claim and right have been unjustly denied. The chance of senior employees being prejudiced or upset by retrospective promotion or deemed promotion of the employee from an anterior point of time cannot be valid consideration to deny her claim. The stand of the Management that in spite of there being merit to the claim of the employee the same cannot be acceded to, could never be countenanced.

11. Reliance was placed on behalf of the petitioner to the decision of the Supreme Court in *UCO BANK AND ANOTHER VS. RAJINDER LAL CAPOOR* (2007-III-LLJ-352) wherein Apex Court held "The departmental proceedings, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a charge-sheet is issued (See *Union of India etc. etc. v. K. V. Janakiraman, etc. etc.* AIR 1991 SC 2010 : 1991-II-LLJ-570. This aspect of the matter has also been considered by this Court recently in *Coal India Limited & Others v. Saroj Kumar Mishra* 2007 (5) SCALE 725 wherein it was held that date of application of mind on the allegations levelled against an officer by the Competent Authority as a result whereof a charge sheet is issued would be the date on which the disciplinary proceedings said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause-20 of the Regulations".

12. On behalf of the Respondent reliance was placed on the decision of the Supreme Court in the *STATE BANK OF INDIA AND OTHERS VS. MOHAMMAD MYNUDDIN* (1988-I-LLN-317) wherein it held "Only when process of selection for promotion is vitiated on ground of bias or mala fides, Court can direct statutory authority to consider fitness of employee for promotion - Court cannot give direction straightway to promote employee who was denied promotion". This decision does not apply to the facts of the case. Though there is no mala fides, legal claim, unjustly and wrongfully denied cannot be allowed to be perpetrated in an informal manner and without the support of formally laid down rules and procedures.

13. In view of my foregoing discussion there need not be any hesitation to hold that the action of the Management is far from legal and justified and the employee is entitled to be promoted or deemed promoted with retrospective effect, the date from which her junior was promoted under the merit channel and entitled to have her salary fixed in the Officer cadre but without any arrears of salary.

14. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25 May, 2012)

A.N. JANARDANAN, Presiding Officer

Witnesses Examined:—

For the 1st Party/Petitioner	:	None
For the 2nd Party/Management	:	None

Documents Marked :—

On the petitioner's side

Ex. No.	Date	Description
Ex.W1	20-10-2003	Memorandum of Settlement dated 20-10-2003 in the matter of Direct Recruitment of Officers in JMG Scale-I and Promotions to Award Staff
Ex.W2	7-12-2004	Call letter for the Written Test for promotion from Clerical to Officer Cadre
Ex.W3	25-8-2004	Memo Reference CO.CH. N.VIG C. 122.2004 issued to R. Rajeswari by Deputy General Manager, Circle Office, Chennai
Ex.W4	2-9-2004	Reply submitted by R. Rajeswari
Ex.W5	27-12-2005	Representation by R. Rajeswari to General Manager HO/HRM Department Chennai soliciting the fate of the test taken by her
Ex.W6	16-5-2006	Letter Ref: IBIEU/360/2004-06 by Indian Bank Employees Union to Deputy General Manager HRM to release the promotion kept under sealed cover
Ex.W7	2-9-2006	D.A. Show Cause Ref. VIG/DP/AS/347/2006 issued to R. Rajeswari by Asstt. General Manager/D.A.

Ex. No.	Date	Description	On the Respondent's side		
Ex. No.	Date	Description	Ex. No.	Date	Description
Ex.W8	18-9-2006	Reply submitted by R. Rajeswari	Ex. M1	12-1-1988	Promotion of Government Servants against whom disciplinary proceedings or whose conduct is under Investigation - Procedure and Guidelines involving "Sealed Cover"
Ex.W9	14-9-2006	Letter Ref. IBEU/437/2004-06 to General Manager/HO/HRM for releasing promotion to R. Rajeswari	Ex. M2	28-10-2003	Policy for promotion from Clerical Cadre to Officer Cadre JMG-Scale-I
Ex.W10	10-5-2007	Representation by R. Rajeswari to the Chairman and Managing Director under Samadhan Scheme	Ex. M3	—	Extract of Page 71 - Bank's Rule-(Disciplinary) -Regarding enquiry
Ex.W11	16-6-2007	Letter Ref. IBEU/558/2004-06 to General Manager referring the Supreme Court's observation on departmental proceedings	Ex. M4	14-9-1992	Government of India - Ministry of Personnel-Promotion of Government Servants - Procedure and Guidelines
Ex.W12	27-12-2006	Extract of the reply given to the Union	नई दिल्ली, 15 जून, 2012		
Ex.W13	24-3-2008	Letter from R. Rajeswari to the Public Information Officer Indian Bank under the RTI Act			
Ex.W14	22-4-2008	Letter Ref. HO: CSC; RTI: 450: 2007-08: 055 from Public Information Officer and General Manager (P&D)	का.आ. 2340.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 30/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-6-2012 को प्राप्त हुआ था।		
Ex.W15	9-5-2008	Rep. from Ms. Rajeswari to Appellate Authority, RTI Act			
Ex.W16	18-6-2008	Letter Ref. HO: CSC; RTI: 450: A010: 2008-09 from Appellate Authority and Executive Director, RTI Act	[सं. एल-12012/98/2008 आई आर (बी-11)] शीश राम, अनुभाग अधिकारी		
Ex.W17	2-3-2009	Letter Ref. IBEU:33:2009 from IBEU, Chennai addressed to Asstt. Labour Commissioner, Chennai raising an Industrial Dispute			
Ex.W18	13-10-2009	Ref. IRC : Assistant Commissioner of Labour (Central): 367/2009 from Asstt. General Manager, HO/HRM to Asstt. Labour Commissioner (C), Chennai	New Delhi, the 15th June, 2012		
Ex.W19	20-10-2009	Rejoinder submitted by Union Ref. IBEU: 191 :2009			
Ex.W20	20-4-2010	Rep. from R. Rajeswari to Asstt. General Manager, HO/HRM before joining as Officer	[No. L-12012/98/2008-IR (B-II)] SHEESH RAM, Section Officer		

S. O. 2340.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.30/2009) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Union Bank of India and their workmen, which was received by the Central Government on 4-6-2012.

ANNEXURE**BEFORE SRI RAM PARKASH, HJS, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR****Industrial Dispute No.30 of 2009****Between**

Sri Jagan Prasad Agrawal,
Son of Sri Jagdish Prasad,
232, Patharpura, Vrindaban,
Mathura.

Versus

The Assistant General Manager,
Union Bank of India,
H-1, 117/240, Regional Office,
Pandu Nagar, Kanpur: U.P.

AWARD

1. Central Government, Mol, vide notification no.L-22012/98/2008/IR(B-II) dated 13-5-09, has referred the following dispute for adjudication to this tribunal-

2. Whether the action of the management of Union Bank of India i.e. Assistant General Manager, Union Bank of India, Anazmandi Vrindaban Branch Mathura in terminating Sri Jagan Prasad Agrawal (workman) from the services of Union Bank of India Anajmandi Vrindaban Branch Mathura with effect from 1-8-04 is legal and justified? What relief the workman concerned is entitled to?

3. Briefly stated facts of the case is that the claimant was appointed under the opposite party on 3-4-2001 and in the year 2004 he was working as a permanent employee as IV class employee. It is stated that when he went to attend his duties on 1-8-04, the employer has refused to take him on service without assigning any reason of ryhm. It is stated that he has requested to let him know about his wrongs but the management didn't listen him at all. It is stated that the removal of the services of the workman with effect from 1-8-04 is arbitrary and illegal and is in violation of the provisions of U.P Industrial Disputes Act, 1947. At the time of retrenchment of the claimant the opposite party has not followed the prescribed procedure laid down for retrenchment of an industrial employee. Accordingly it has been prayed by the claimant that he is entitled to be reinstated in the services of the opposite party with all consequential benefits..

4. The opposite party has filed its written statement against the claim of the petitioner alleging that the reference order made by the appropriate government is bad in law as it has not been made after applying its full mind. It is stated that there is no cause of action on facts or law as were

applicable at the relevant time. It is stated that there is no valid espousal of cause of action relating to the workman by the union, therefore, reference is not maintainable.

5. It is stated that the present matter is not an industrial dispute within the provisions of Section 2(k) of the Act. The claim petition is bad in law for mis-joinder of the parties to the matter, therefore, this tribunal has no jurisdiction to decide the matter which specifically falling under the provisions of U.P. Industrial Disputes Act, 1947.

6. It is stated by the opposite party that there never existed any relation of master and servant or employer and employee between the opposite party and the claimant therefore, the reference before this tribunal is not maintainable. It is stated that the opposite party is a Public Sector Organization and is governed by the rules and regulations as set up by Central Government regarding matters of recruitment of employees and officers. It is not possible for the management while making recruitment to deviate from the policy of the Government of India while making recruitments of staff and officers. The opposite party has a prescribed recruitment procedure for recruitment of staff and officer in the bank but the concerned petitioner had never underwent through such procedure hence his claim before this tribunal for seeking relief as claimed by him is not legally tenable. It is stated that the concerned petitioner was never appointed by the bank as claimed by him at any point of time. It is stated that the claimant had offered on 3-4-2001, that he is owner of a generator and is in position to provide the same for the use of the bank on rental basis. It is stated that his above said offer was accepted and he was directed to facilitate the generator facility to the branch and the charges were credited by the bank to his saving bank account no. S-01765, normally. It is stated that the generator facilities as was provided by the claimant was up to the mark, therefore, the generator facilities hired from the claimant were ceased and his entire claim were settled in full satisfaction. As the claimant was a facilitator of providing generator facility to the bank therefore, under such circumstances question of relationship of employer and employee does not arise in the facts and circumstances of the case.

7. It is stated that earlier to the filing of the present petition before this court the claimant had also filed a civil suit before the Civil Judge (Senior Division) Mathura, which was ultimately culminated into withdrawal of the case on the request of the claimant. The petitioner ultimately filed a petition under Section 2-A of U.P. Industrial Disputes Act Kanpur on which the notices have been issued to the parties and present reference has been made.

8. It is stated that the claimant was never appointed by the bank and as such there is no relationship of employer and employee between the contesting parties. Since the concerned petitioner never remained in the employment of

the opposite party therefore, termination of service or retrenchment with effect from 01.08.34 does not arise.

9. On the basis of above pleadings it has been prayed that the claim of the petitioner is devoid of merit and no provision of the Industrial Disputes Act, 1947, are applicable in the case of the petitioner, therefore, violation of any of the provisions of the same does not arise and the present petition of the petitioner is liable to be rejected as a whole holding that he is not entitled for any relief as sought for by him.

10. Rejoinder statement has also been filed by the petitioner but nothing new has been narrated therein except reiteration of the facts already pleaded by him in his claim petition.

11. Heard and perused the record. Claimant has produced his documentary as well as oral evidence. Opposite party has not adduced any oral evidence. Opposite party has produced two documents, these are photocopies. There is one application which is photocopy alleged to be of Jagan Prasad given to the bank but this has not been proved by the opposite party. There is one more letter of the bank given to the SHO Kotwali Vrindaban but this letter has also not been proved. These are waste papers.

12. Claimant has produced himself as w.w.I. He has given his statement on oath on affidavit alleging that he was engaged by the opposite party on 3-4-01 and worked there till 2004. In the beginning he was paid Rs.30 per day which was later enhanced to Rs. 40. He was paid through voucher. He was also utilized to serve water to the staff and was paid thereof in addition to his remuneration which was being deposited in his saving bank account no.501765, Union Bank of India Anaz Mandi Vrindaban. Apart from that various natures of duties were taken by the bank. It is denied by him that he ever supplied generator services to the bank, but he stated that as the wages were not sufficient for his lively hood so he has also provided a generator on rental basis to the bank but it does not mean that he was not employed as casual labour. He state that his services were terminated on 1-8-04 without stating any reason by an oral order by the bank. He was not served with any notice. He was not paid any retrenchment compensation and that the opposite party has not followed any of the provisions of the Act at the time of dispensing his services.

13. Claimant has filed copy of 46 notices which is alleged to have been served as notice on the different borrowers of the bank. He has also filed photocopies of different vouchers ranging from 2001 to 2002 alleging that these vouchers bears his signatures and relates to the payment of wages. He also filed vouchers relating to the items purchased by him at the behest of the officers of the bank officers of different dates. He has further filed photocopies of vouchers relating to the payment received

by him as remuneration. He has also filed payment vouchers made to him for filling waters in the coolers installed at the branch of the bank. He has further filed copies of the vouchers against which he received payment as conveyance allowance- rickshaw charges and also filed photocopy of the vouchers for the different. He has also performed the duties of a regular He has also performed the duties of a regular clerk during his tenure in the employment of the bank. He has also filed paper vide list no.9/15-9-187 which has duly been examined by the tribunal.

14. The evidence adduced by the claimant on oath is un-rebutted. Opportunity was given to the opposite party to have a cross from the claimant but they did not conduct the cross and the opportunity was closed. Opposite party has not produced any single witness in support of their pleadings as well as to rebut the claim of the claimant, therefore, considering all the facts and circumstances of the case oral as well as documentary evidence of the claimant I find that there is no reason to disbelieve the evidence of the claimant which is unrequited.

15. Claimant has placed reliance upon a decision 2008 (119) FLR 398, SC, in between -

Divisional Manager, New India Assurance Company Limited versus A Shankaralingum - wherein the Hon'ble Apex Court held - Procedure prescribed under Section 25F having been not followed held retrenchment was bad in law- order to be reinstated.

16. In view of the foregoing findings of the case, it is held that the claimant has successfully established his claim before the tribunal that he was employed by the opposite party and that he was not paid any retrenchment compensation, notice or notice pay in lieu of retrenchment. Since his evidence goes un-rebutted therefore it is held that the determination of his services with effect 01.08.04, by the opposite party bank is neither legal nor justified. Therefore, he held to be reinstated in the service of the bank with 50% back wages.

17. Reference is answered accordingly in favour of the claimant and against the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2341.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 1032/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-5-2012 को प्राप्त हुआ था।

[सं. एल-12012/118/2002-आर्डी आर (बी-11)]

श्रीमान राम, अनुमानित अधिकारी

New Delhi, the 15th June, 2012

S. O. 2341.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No.1032/2002) of the Labour Court, Pune (Maharashtra) as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 31-5-2012.

[No. L-12012/118/2002-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER FIRST LABOUR COURT AT PUNE

REF. I. D. A. NO. 1032/02

Ex. No.

Between

The Management of Indian Overseas Bank
Through the Chief Manager,
Indian Overseas Bank,
Camp branch, East Street,
Pune

.. First party

And

Their Workman
Nitin Balasaheb Sasane
S. No. 229/7, Sasane Mala,
Kamdhenu Estate, Hadapsar,
Pune

.. Second party

REFERENCE UNDER SECTION 10(1)(D) AND SUB SECTION 2A OF THE INDUSTRIAL DISPUTES ACT, 1947

Appearances: Adv. Mr. Vipradas for first party

Adv. Mr. Waikar for second party

AWARD

(Passed on this 26th day of April 2012)

This reference No. L-12012/118/2002-(IR(B-II) dt. 11-10-2002 is sent by Central Government, Government of India, Ministry of Labour, New Delhi for adjudication over the following demand mentioned in the schedule.

SCHEDULE

"Whether the person Shri N.B.Sasane, engaged in the Indian Overseas Bank, Pune for driving the vehicle w.e.f. October, 1998 in the guise of personal driver of the Chief Manager was legal and justified and his termination/discontinuation from the service orally w.e.f. 23-1-2001 is legal and justified? If not, what relief the concerned workman is entitled to?"

2. The second party has filed his statement of claim vide Ex. No.2. It is submitted that he was working as a Car Driver with the first party since October 1998 on the car of the Chief Manager. He was also required to perform the work of bringing cash from other banks, supplying the cash to other branch and to do other work of moving the files. If he was asked to take the car out station, he also performed that work. The Manager was threatening to remove him from the job. He was required to work on less wages and the service benefits such as the provident fund, gratuity and bonus was not paid to him. Over time work was got done from him by threatening him about his job. The bank did not keep any record of his employment. An appointment letter was not given to him. With a hope of getting confirmed in service, he performed the duty from October 98 to 27-1-01 as directed by the manager. Before 22-1-01, while taking the cash from the bank to other bank, the gunman was given for security. However, he was asked to go without a gunman to, Bank of Baroda, Rasta Peth, Pune on 22-1-01 by the Manager. The second party had reached the cash accordingly.

3. It is further submitted that when the second party went to work on 23-1-01, the Manager told him that if he was ready to reach the cash without Gunman then only he should stay on work or leave the job. Thereafter on 24-1-01, 25-1-01 and 27-1-01, he went to work regularly, but the Chief Manager did not allow him to perform the driving work despite his repeated request. He had no source of income and he is starving. The first party is illegally preventing him from coming to work and for remaining permanent in job. The bank has intentionally kept no record regarding his service. He has never the personal driver of the Chief Manager. By working for 28 months, he became permanent. He was paid for some time as temporary driver. He was initially paid Rs.1800 and thereafter he was paid Rs.2000. The first party has acted illegally regarding his services. He has sought for reinstatement in service with continuity and full back wages and all consequential benefits along with salary for the months of January and February 2001 with cost of litigation.

4. The first party has filed its written statement vide Ex.No.5 and all the adverse allegations are denied. It is submitted that there is no employer employee relationship between the first party and the second party. The Chief Manager of the Bank is not empowered to recruit any person in order to be employed in the bank. For class IV employees like messengers etc., the bank notifies the employment exchange about the vacancies to be filled. Where upon the employment exchange forwards a list of persons suitable for the job as per bank's requirement. The recruitment is then decided by the bank as per the procedure specified. The bank issues letter of appointment to each and every person who would be employed for rendering services to the bank. At no time, the second party was selected by the BSRE nor the bank has recruited him as it employee. It is

denied that the bank had employed him as a car driver w.e.f. October 1998. It is denied that he was also asked to bring and deliver cash. Since he was never employed by the bank, there was no question of giving any threat to him for being terminated and the allegation regarding getting the work done on less salary or depriving him of provident fund, gratuity and bonus etc. is irrelevant. All other allegations are denied. Since the second party was not appointed by the bank, there is no question of his reinstatement in service.

5. It is further submitted that the then Chief Manager of the Cantonment Branch of the bank is entitled to have certain allowances. The allowances are paid to the supervisory and managerial staff of the bank in accordance with the settlement arrived at between the Officers Association and the bank. Once the allowance are paid, it is for the concerned officer to select their own personal servants and assign them duties. Merely because some officers engage some personal servants, such personal servants cannot claim employment in the bank. The second party was employed as personal driver of the then Chief Manager. The bank in accordance with the terms of the settlement between the officers association and the bank, was paying certain allowances to the then Chief Manager, Shri M.K.Dutta, who appeared to have engaged the workman as his personal servant. The employment or otherwise termination of personal servant is at the sole discretion of the concerned officer and the bank has absolutely no role to play in the same. Thus the first party prays for rejection of the claim of second party.

6. The following issues arise for my determination as framed and my findings against them are recorded as follows.

Issues	Findings
1. Whether there exists employer employee relationship between the first party and the second party ?	In the negative
2. Does the second party prove that his services came to be terminated illegally by the first party ?	In the negative
3. Is the second party entitled for the reliefs claimed ?	In the negative
4. What order ?	As per final order

REASONS

7. In support of his case the second party has examined himself vide Ex.No.13. In defence the first party has examined Manoj Kumar Dutta vide Ex. No. 45. The argument advanced by I.d. Adv. Mr. Waikar for the second party and I.d. Adv. Mr. Vipradas for the first party, is heard.

AS TO ISSUE NO.1

8. The second party has raised this dispute claiming himself to be an employee of the first party. The first party has emphatically denied existence of such relationship. The initial burden to prove existence of such relationship shifts on him as he would be the person who would fail if no evidence is adduced on this particular issue. Thus it needs to be seen as to whether the second party has succeeded in proving this.

9. The second party has stated in his affidavit that he was working with the first party as a driver on the car of Chief Manager since October 98 and he performed the work of taking the cash to and fro the other branches of the bank and to forward the files at the office, as per the directions of the officers of the bank. He stated that he was taken in temporary service but with a view that he would claim right to the post, no record was kept of his job and he was not provided the benefits such as provident fund, gratuity and bonus. As per his version, on 22-1-09, he was asked to supply the cash at the Rasta Peth Branch of Bank of Baroda at Pune, without a gunman in the car which he had reached accordingly. He stated that the gunman was provided on each previous occasion as security and when he stated to the manager that he could not take the cash without the gunman, the manager had asked him to do so and accordingly he acted. As per his version, on the next day, the Chief Manager had called him and told him that if he was going to deposit the cash with the gunman, he should continue with the work or else to give it up and then the second party had agreed to do the same but on that day and on 24-1-01, 25-1-01 and 27-1-01, he was not allowed to work on the car. The second party has stated that when he had applied to the Chief Manager in writing on 29-1-01 vide Ex. No.39, no reply was given to him and when he contacted on phone he was given threatening answers. The second party has stated that while he was working with the first party, it was depositing his wages in his SB A/C no. 8625 kept with the same bank. He filed that pass book on record. He stated that bank had created false documents to show that direct cash was deposited in his account.

10. The second party stated that as per the debit voucher, the salary was first withdrawn by scroll number 834 to pay to him and the same amount was deposited in his bank account. He stated that by several vouchers payment was made to him of salary and travelling allowance and rickshaw charges as Chief Manager had appointed him as sub staff driver. He denied that he was personally appointed by the Chief Manager. He has filed on record the vouchers of the bank vide Ex. Nos. 20 to 38. During his cross examination he stated that he had applied to the first party in writing for getting the job. However, he admitted that he had not filed its acknowledgement on record. Thus there is no document in support of his contention that he had applied in such manner for getting a job.

11. The second party has also admitted that the bank had not given him any appointment letter in writing, his name was not on the attendance register and he never complained for not getting the appointment letter in writing. Regarding his nature of work, he stated that he was taking the branch manager by the car from his house to the bank and from the bank to his house. His version shows that he had worked with Soman Kutty—the Chief Manager and subsequently with Mr. Dutta the Chief Manager. He was unable to tell the name of the officer on whose directions he was shifting the files in the bank. He has denied that he was personal driver of the Chief Manager. He stated that he had not filed any document to show that he was appointed in temporary service. He stated that the union officer has stated that he would be taken in service of the bank and the Chief Manager had assured him that his work would be done. This is an important admission. He has claimed that the Chief Manager had assured him of taking him in service but such mention is not found in his affidavit. Though he stated that Mr. Soman Kutty has assured him as such, he avoided to examine Mr. Soman Kutty as his witness. This admission shows that he was not in regular service of the bank. Moreover, as per his admission, his provident fund was not deducted and bonus was not paid to him and he never complained about it. He admitted that the Indian Overseas Bank is a Nationalized Bank and it has its own rules, the name of the officer who as per his claim, had asked him to bring the cash from the car in the absence of the gunman is not stated by him and he had nowhere complained that he was not allowed to work on 24-1-01, 25-1-01 and 27-1-01.

12. In this regard, for the first party, the witness then manager Mr. Dutta has stated that there is no employer employee relationship between the first party and the second party. The Chief Manager of the Bank is not empowered to recruit any person in order to be employed in the bank. For class IV employees like messengers etc. the bank notifies the employment exchange about the vacancies to be filled. Where upon the employment exchange forwards a list of persons suitable for the job as per Bank's requirement and the recruitment is then done as per the procedure specified. He stated that the bank issues letter of appointment to every person who is employed for rendering services to the bank. At no time the second party was selected by the BSRE nor the bank has recruited him as its employee. It is denied that the bank had employed the second party as a car driver w.e.f. October 1998 and the second party was asked to bring and deliver cash. Since he was never employed by the bank there was no question of giving any threat to him for being terminated and the allegation regarding getting the work done on less salary or depriving him from provident fund, gratuity, bonus etc. is irrelevant. As he was not appointed by the bank, there is no question of his reinstatement in service.

13. Mr. Dutta further stated that the Chief Manager of the Cantonment Branch of the bank is entitled to have certain allowances. Once the allowances are paid, it is for the concerned officer to select their own personal servant and assign them duties. Merely because some officers engage some personal servants, such personal servants cannot claim employment in the bank. He stated that the second party was employed as personal driver of the then Chief Manager. The bank in accordance with the terms of the settlement between the officers association and the bank, was paying certain allowances to the then Chief Manager. He stated that he had engaged the second party as his personal servant and the bank has absolutely no role to play in the same. During his cross examination, he stated that Soman Kutty was the Chief Manager in 1998 who had appointed the second party as the driver. Mr. Dutta has stated that he had also continued with the second party as a driver and the second party was working on the same car. The witness has clarified that the services of the second party were not terminated because he was not in service of the first party. He made it clear that the salary of second party was not made from his personal account but it was reimbursed by the bank. There is no rebuttal of his such version. In fact the vouchers filed on record vide Ex. Nos. 21, 22, 24, 26, 28, 32, 34 and 37 clearly show that it was the reimbursement made to the Chief Manager with regard to the salary to be paid to the second party. The witness Dutta has stated that he had utilised the bank's money for making payment to the second party. He was not sure if the gunman had accompanied for transfer of cash on 22-1-01. Here he stated that the driver insisted for a gunman to accompany him and he was annoyed with the driver. He stated that when he asked him to take the car, he refused and threw the key on the table. It is not mentioned in the written statement. As per his version, when the second party had thrown the key the Senior Manager, Dy. Manager and one more officer were there.

14. Ld. Adv. Mr. Waikar for the second party has argued that the second party was working with the first party and the bank was making payment of his salary, he was performing the work of the bank also and he was not merely the personal employee of the Chief Manager. He argued that this fact is well established from the evidence on record and therefore as the employer employee relationship is proved, and as there is illegal termination of the services of the second party having been effected by the first party, he be reinstated in service.

15. Ld. Adv. Mr. Vipradas for the first party has on the other hand argued that there is no employer employee relationship between the second party and the first party. There is material on record to show that the second party was the personal employee of the first party and in the light of the ratio laid down in the authorities filed by him, the present dispute is not maintainable for want of existing of employer employee relationship between the parties. He

argued that the documents i.e. the vouchers filed on record clearly show that the payment was made as reimbursement to the Chief Manager for the personal driver appointed by him and it shows that the Second party was not the employee of the bank.

16. The Ld. Counsel for the first party Mr. Vipradas has placed his reliance on the authorities in—

(i) Between employers in relation to Punjab National Bank and Ghulam Dastagir 1978 1 LLJ 312 wherein it is held that there is nothing on record to indicate that the control and direction of the driver vested in the bank. After all the evidence is clearly to the contrary. In the absence of material to make out that the driver was employed by the bank, was under its direction and control, was paid his salary by the bank and otherwise was included in the army of employees in the establishment of the bank, it cannot be assumed that the crucial point has been proved. There is no camouflage or circumvention of any statute. There is no nexus between the driver and the bank.

The observations in this authority are found fully applicable in the present matter.

(ii) Between Vellanikkara and Thattil Rubber Estates and its workmen and others.

The Industrial Tribunal found that the driver was not employed by the estate but was employed under the proprietor of the estate in his personal capacity. The Industrial Tribunal also held that the dispute regarding his discharge taken up by the union of which the workmen employed by the estate were members, was an industrial dispute and granted the appropriate relief finding that the discharge was not justified.

Allowing the writ petition preferred by the employer for getting the said award quashed, held that in view of the finding reached by the industrial tribunal that the concerned workman was only an employee under the proprietor of the estate and not on the establishment of the estate, the dispute would not be considered to be an industrial dispute as defined in S.2(K) of the Industrial Disputes Act. The dispute did not satisfy the necessary tests laid down by the Supreme Court in the decision in 1958 1 LLJ 500.

(iii) Accounts Officer (A & I) A.P.S.R.T.C. and others Vs. P Chandra shekhara Rao and others (2006) 7 Supreme Court Cases 488 wherein it is held that the High Court did not have the benefit of considering the recent decisions of this Court, including the Constitution Bench judgment in Secy., State of Karnataka Vs. Umadevi (3). In the said decision it has categorically been held that the appointments made on a contract basis or on daily wages and in violation of the statutory rules or the Rules framed under the proviso appended to Article 309 of the Constitution of India, being void ab-initio and thus nullities

and hence the question of regularising their services would not arise.

The view expressed in these authorities guides me while considering the present dispute.

17. Now, with such evidence on record, in the first place, it is observed that the first party is a nationalized bank and it has its own recruitment procedure. There is no document on record to show that the second party was in fact appointed by the first party. The documents show that the reimbursement was made to the Chief Manager regarding the payment to be made to the driver. It shows that the second party was personally appointed by the manager and it was not the direct appointment by the bank. In the absence of such document showing appointment being made by the bank, the second party cannot be the employee of the bank. In fact, the evidence clearly proves that he was the personal employee of the Chief Manager. In his such capacity, it seems that the Chief Manager had asked him to perform more duties at times. But that would not confer the status on the second party, of being a workman of the first party. As such, no employer employee relationship is seen existing between the first party and the second party. With this view of the matter, holding it accordingly, I answer issue no. 1 in the negative.

AS TO ISSUE NOS. 2 AND 3

18. On the basis of the finding recorded for Issue No.1, it is clear that there is no employer employee relationship between the first party and the second party. Thus there is no question of having any industrial dispute and as such, there is no question of any illegal termination of the services of the second party by the first party. Therefore the second party is not entitled to get any relief from the first party. With this view of the matter, holding it accordingly, I answer Issue Nos.2 and 3 in the negative.

AS TO ISSUE NO. 4

19. In view of the findings recorded for Issue No.3, the present reference deserves to be answered in the negative and deserves to be rejected. In the circumstances of the matter no order as to costs. With this view of the matter, holding it accordingly, I proceed to pass the following order.

ORDER

1. The reference is rejected.

2. No order as to cost.

M. S. BODHANKAR, Presiding Officer

Pune

Dt. 26-4-12

नई दिल्ली, 15 जून, 2012

का.आ. 2342.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-1/12/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/326/1994-आई आर (बी-11)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2342.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-1/12/1995) of the Central Government Industrial Tribunal/Labour Court-I, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workman, which was received by the Central Government on 31-05-2012.

[No. L-12012/326/1994-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

JUSTICE G. S. SARRAF, Presiding Officer

Reference No. CGIT-1/12 of 1995

Employers in relation to the management of Dena Bank

And

Their workman (D.V. Kundhadia)

Appearances :

For the Management : Ms. Nandini Menon, Adv.

For the Workman : Workman present.

State : Maharashtra

Mumbai, dated 24th April, 2012.

FINAL AWARD

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

"Whether the action of the management of Dena Bank, Bombay in dismissing Shri D.V. Kundhadia, Typist-cum-Clerk from service w.e.f. 15-2-1993 is legal and justified? If not, what relief is the said workman entitled to?"

2. It is not necessary to narrate the facts here as the facts of the matter have been stated in detail in Award Part-I dt. 26-12-1996 and Award Part-II dt. 28-5-1997 passed by this Tribunal.

3. By Award Part-I dt. 26-12-1996 passed by this Tribunal the enquiry held against the workman was found to be legal, fair and proper.

4. By Award Part-II dt. 28-5-1997 passed by this Tribunal the finding of the Enquiry Officer was found to be perverse and the management was given an opportunity to lead evidence for proving the charge.

5. By Final Award dt. 8-10-1997 passed by this Tribunal the workman was held entitled to be reinstated forthwith with back wages and all other consequential benefits.

6. However, by order dt. 23-10-1997 passed by this Tribunal the Final Award dt. 8-10-1997 was held non-est because the Final Award was passed in ignorance of the direction dt. 29-9-1997 given by the Bombay High Court in Civil Writ Petition No. 4631 of 1997 whereby the implementation of the Award Part-II dt. 28-5-1997 passed by this Tribunal was stayed.

7. By Award Part-II dt. 28-5-1997 the finding of the Enquiry Officer was found to be perverse and the management was given an opportunity to prove the charge against the workman by leading evidence.

8. The management, however has not produced any evidence after the Award Part-II dt. 28-5-1997.

9. The workman has filed his affidavit and he has been cross-examined by learned counsel for the management.

10. Heard the workman and Ms. Nandini Menon learned counsel for the management.

11. Since the finding of the Enquiry Officer has been found to be perverse by Award Part-II dt. 28-5-1997 and since the management has not led any evidence thereafter to prove the charge against the workman it is clear that the charge against the workman is not proved.

12. Therefore, the action of the management in dismissing the workman from service w.e.f. 15-2-1993 is held illegal and unjustified and the workman deserves to be reinstated.

13. As regards back wages, considering the facts and circumstances of this matter, I am of the opinion that to award 60% of the back wages will meet the ends of justice.

14. Consequently, the workman D.V. Kundhadia is directed to be reinstated within two months from today with 60% of the back wages.

Final Award passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 15 जून, 2012

AWARD

का.आ. 2343.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापट्टनम पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ एलसी सं. 178/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-06-2012 को प्राप्त हुआ था।

[सं. एल-39025/1/2010-आई ऑफ़ (बी-II)]

श्रीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2343.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. L.C. No. 178/2004) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Visakhapatnam Port Trust and their workman, which was received by the Central Government on 15-06-2012

[No. L-39025/1/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
AT HYDERABAD**

Present : SHRI VED PRAKASH GAUR,
Presiding Officer

Dated the 23rd day of April, 2012

INDUSTRIAL DISPUTE L.C. No. 178/2004

Between :

Sri R. Srinivasa Rao,
S/o Late Satyanarayana,
R/o 31-34-13, Bangaramma Metta,
Allipuram, Visakhapatnam-20.

... Petitioner

AND

1. The Chairman,
Visakhapatnam Port Trust,
Administrative Office Building,
Visakhapatnam.
2. The Chief Mechanical Engineer,
Visakhapatnam Port Trust,
2nd Floor, Administrative Office Building,
Visakhapatnam

.... Respondents

Appearances :

For the Petitioner : M/s. A. Jagadeswara Rao, D. Venkata
Lakshmi, Ch. Kamma Babu & Ch.
Ravi Babu, Advocates

For the Respondent: M/s. A. Krishnam Raju, G. Dinesh
Kumar & B. Nagi Reddy, Advocates

Sri R. Srinivasa Rao, ex-employee of Visakhapatnam Port Trust has filed this petition under Sec. 2 A (2) of the I.D. Act, 1947 for setting aside compulsory retirement order dated 8-4-2003 and to reinstate him into the service with continuity in service with back wages.

2. It has been alleged by the Petitioner that he joined the services as kalasi in the Respondent's organization and worked continuously without any adverse remarks till the time of his compulsory retirement vide proceedings dated 4-4-2003. It has been alleged that while working as Kalasi he fell sick due to family problems as such, he applied for the leave from 13-3-2002 to 20-3-2002. He reported for duty on 21-3-2002 and Respondent informed the Petitioner that his leave has been sanctioned by the competent authority. He has further alleged that he had severe misunderstandings with his wife on several issues which was resulted in the separation due to which he was forced to stay away from his house and move from place to place however, the Petitioner's brother found him and arranged for his treatment under the guidance of Dr. G. Suresh Kumar, Neuro Psychiatrist, Government Mental Hospital, KGH and he remained under his treatment from 1-6-2002 to 2-9-2003. The said medical certificate is being submitted along with this petition. He has further alleged that after great persuasion the wife of Petitioner and her elders realized their mistake and came forward for the compromise and compromise was arrived at in between the Petitioner and his wife in the presence of the elder members of the community on 22-1-2003.

3. Petitioner could not attend to his duties during those periods being mentally upset and psychiatric disorders. Further he applied for leave for a period of 45 days from 16-4-2002 to 31-5-2002. Thereafter he submitted another letter seeking extension of leave from 1-6-2002 to 30-9-2002. He again submitted letter for extension of leave from 1-10-2002 to 15-11-2002. He submitted several leave letters dated 18-1-2003, 25-3-2003, 13-7-2003 and 31-7-2003 under the advice of Doctor, who declared him fit to resume his duty from 2-9-2003. In the mean time management started proceeding against the Petitioner for unauthorized absence, without any information to the Petitioner ex-parte proceedings were held by the Enquiry Officer, who submitted his ex-parte report on the basis of which the impugned punishment of compulsory retirement was imposed on the Petitioner. The Petitioner never absented himself willfully or without sufficient cause. He remained sick, to that effect he has submitted leave letters from time to time. Enquiry Officer did not consider these facts and gave perverse finding resulting in compulsory retirement of the Petitioner from services. The action of management is illegal, arbitrary and against the principles of natural justice. Hence, this petition.

4. Management has filed counter statement wherein management has alleged that Petitioner remained absent

from 13-3-2002 to 20-3-2002. He submitted his leave application on 21-3-2002 which was rejected and leave was not granted. It has been further alleged that the state of affairs alleged by the Petitioner is not known to the management. It was purely a personal matter which could not have come in the way of Petitioner while discharging his duties. It is not true that Petitioner has sent leave application from 1-6-2002 to 30-9-2002 and from 1-10-2002 to 15-11-2002. He has neither submitted any letter nor any sick certificate. It is further alleged that Petitioner was penalized on 30-3-2002 for his unauthorized absence. He did not submit any explanation and again absented from 11-4-2002 and continued to remain absent for a pretty long time, a charge sheet was issued to the Petitioner which he received in person but did not file any explanation nor appeared before the Enquiry Officer. However, management produced evidence on the basis of which the charges against the Petitioner were found proved and on the basis of the enquiry report and looking into the conduct of the Petitioner, he was imposed with a penalty of compulsory retirement. Petitioner remained absent for more than one year i.e., from 12-9-2002 to 4-2-2003 without any reasonable ground. Petitioner does not deserve any leniency. Hence, this petition deserves to be dismissed.

5. Both the parties have filed their respective evidence. Petitioner has filed xerox copies of memorandum, domestic enquiry proceeding, sick leave application dated 29-8-2003, his representation before the Disciplinary Authority, sick certificate issued by Dr. G. Suresh Kumar, Government Mental Hospital, Visakhapatnam dated 26-8-2003, prescription issued by Dr. G. Suresh Kumar from 1-6-2002 to 26-8-2003 and his own affidavit in the present case.

6. The management has filed domestic enquiry proceeding, enquiry proceeding, enquiry report and order of Disciplinary Authority.

7. Learned Counsel for the Respondent remained absent on the date of argument. I have heard Learned Counsel for the Petitioner workman.

8. Before entering into the merit of the case and before hearing the parties or Petitioner's counsel under Sec. 11 A of the Industrial Disputes Act, 1947, the matter was taken for adjudication on legality and validity of domestic enquiry, Learned Counsel for the Petitioner moved memo dated 22-3-2012 conceding the legality and validity of domestic enquiry and requested the matter to be heard under Sec. 11 A and to pass an award on the merits. In light of the memo dated 22-3-2012, domestic enquiry was held to be legal and valid.

9. I have heard Learned Counsel for Petitioner under Sec. 11 A of the Industrial Disputes Act, 1947, this Tribunal has to consider the following points:

I. Whether the Petitioner has been absenting from the duty intentionally without any reasonable ground or reason?

II. Whether the punishment imposed by the management is disproportionate and if so, to what relief the Petitioner is entitled?

10. **Point No. I :** It has been argued by the Learned Counsel for the Petitioner that though the Petitioner's counsel has not challenged the legality and validity of the domestic enquiry, but under Sec. 11A of the Industrial Disputes Act, 1947, the Petitioner is entitled to assail the finding of Enquiry Officer, which is based on no evidence. Not only that the Learned Counsel for the Petitioner has argued that the Enquiry Officer was performing quasi-judicial function and it was his bounden duty to consider the facts and evidence of both the parties. No doubt the Petitioner did not participate in the enquiry proceeding for which he has given cogent reasons in para 5 of the claim statement wherein he mentioned that he was treated by Dr. G. Suresh Kumar, Neuro-psychiatrist, Government Mental Hospital, Visakhapatnam for mental disease and he has produced medical certificate from the Doctor along with the prescription of the Doctor from 1-6-2002 to 2-9-2003. This material aspect of the case has not been challenged by the Respondent in his counter statement. Since the material placed by the Petitioner in para 5 of his statement has not been challenged then it has to be accepted to be true. Thus, in the light of the evidence produced by the Petitioner before this Tribunal the certificate of Dr. G. Suresh Kumar along with his prescription starting from 1-6-2002 to 2-9-2003 is evident that Petitioner was suffering from psychiatric problem and his mental condition was not sound, during enquiry proceeding. This material aspect was raised before the Disciplinary Authority as well, who did not consider the point raised by the Petitioner regarding his illness and mental inability to understand the proceeding before the Enquiry Officer. Not only that the management itself has produced xerox copy of the medical certificate issued by Dr. D. S. Patnaik, Casualty Medical Officer, King George Hospital, Visakhapatnam dated 16-4-2002 wherein the Doctor has advised rest for 45 days treatment of Viral Hepatitis to the Petitioner. This material paper was produced by the management before the Enquiry Officer during the course of the enquiry but, Enquiry Officer has not taken cognizance of this material paper during the enquiry proceeding. Thus, the entire finding of the Enquiry Officer is lopsided and based on no evidence.

11. I have considered this argument of the Learned Counsel for the Petitioner and have gone through the contents of the counter affidavit filed by the Respondent wherein in para 4 of the counter statement, the management has stated that, "contents of para 5 of the claim statement are not within the knowledge of the management. It is further been alleged by the management that it is personal matter of the Petitioner which should not have come in the way of Petitioner in discharging his duties. I think this averment made in the para 4 of the counter statement is a casual reply of the contents made in para 5 of the claim

statement wherein the Petitioner has stated that he was sick and he was suffering from mental disease and was under treatment of Sri G. Suresh Kumar from 1-6-2002 to August, 2003. In support of his contention he has filed xerox copies of medical certificate along with prescription of the hospital and of Dr. G. Suresh Kumar, which amply prove that the Petitioner was suffering from psychiatric problem and he was under treatment of a Neuro-psychiatric specialist. Under these circumstances it can not be presumed that Petitioner's sickness should not have come in way of discharging his official duties. Since Petitioner was suffering from mental disorder and other diseases for which he was under going treatment in that case, he was not in a position to discharge his duty properly and effectively.

12. Secondly, the Petitioner has informed the management that he is suffering from Jaundice and the he has submitted his medical certificate before the management recommending a 45 days rest, but what action has been taken by the management is not clear, though the certificate has been produced by the management itself. This shows the prejudicial attitude of the management in taking action against the Petitioner for his absence. The medical certificate filed by the management during course of the enquiry has not been considered by the Enquiry Officer, not a single word has been uttered by the Enquiry Officer in his report. Not only that management has produced only one witness, Sri E. Nagaraju, SDK, FE section and SWII who has nowhere stated that the Petitioner remained absent without any reasonable cause or without any sick or leave application. The Enquiry Officer has himself asked the witness at Q.No.3, that Srinivasa Rao, is attending to duty in between 11-4-2002 to till today i-e-, 4-2-2003, will you please state about this" to this question, the witness has answered, "he is not attending to his duty as on date i.e., from 1-4-2002 to 4-2-2003." the Enquiry Officer further asked the witness "whether the employee R. Srinivasa Rao is irregular to his duties?". He has answered Yes. He is irregular to his duties and first memorandum was issued to him on 7-9-2002. To which he has acknowledged which was served by him on the Petitioner.

13. No where in his statement the witness has stated that the Petitioner has remained absent without any leave application or without any reasonable cause or action of the Petitioner was willful absence from duty thus, it can not be said that Petitioner remained absent without reasonable cause or his absence was willful. Coming to the finding of the Enquiry Officer, I have looked into the finding of the Enquiry Officer, he has not discussed a single evidence either of the management or of the charge sheeted employee in his finding. He has simply written the finding: Article of charge -I "proved". How the Enquiry Officer has arrived at this conclusion, that the charges were proved against the Petitioner has not been discussed or dealt with by the Enquiry Officer, as such, the finding of the Enquiry

Officer is perverse and it is not a finding in the eye of law as such, this Tribunal has come to the conclusion that the finding arrived by the Enquiry Officer is based on no evidence, it is a perverse finding and thus, the penalty imposed on the basis of such a perverse finding is also illegal and arbitrary.

14. Coming to the question of absence of Petitioner, it is an admitted case of the Petitioner that he remained absent, but he has explained the cause of absence firstly, that he suffered with jaundice, secondly that there was severe misunderstanding between him and his wife which resulted in separation of the couple and Petitioner suffered mental illness and depression for which he took treatment of Dr. G. Suresh Kumar, from 1-6-2002 till 20-8-2003 and he was declared fit in September, 2003 to resume duty in the month of September, 2003. Thus, absence of Petitioner from duty is neither without sufficient ground nor unreasonable.

15. Learned Counsel for the Petitioner has argued that Hon'ble High Court of A.P., Hyderabad in the matter of K.A.K. Babu Vs. Depot Manager, APSRTC, Madhira Bus Depot, Khammam District wherein it is held that, "mere non-intimation of admission in hospital or non-information to the Depot Manager is not a ground for termination of the service if it is proved that the employee was hospitalized or was suffering from sickness. In the present case also Learned Counsel has argued that the very evidence produced by the Petitioner and averments made in the claim statement which has not been challenged by the management. It is fully proved that the Petitioner was absent due to mental illness and depression and psychiatric problem from June, 2002 to August, 2003 and he also suffered with jaundice in April to May, 2002 as such, it can not be said that the absence of the Petitioner was for any unreasonable or without sufficient grounds. I have gone through the case law of 2011(3) ALD page 783 published in the matter of K.A.K. Babu Vs. Depot Manager, APSRTC, Madhira Bus Depot, Khammam District. The facts of this case and case law cited by counsel is applicable in this case. Learned Counsel for the Petitioner has further relied upon the case law reported in 2012(1) ALD 57 in the matter of Ch. Prabhakar Rao Vs. Deputy Inspector General of Police, R.K. Puram, New Delhi, wherein Hon'ble High Court has held that "if leave application produced or not, extension of leave and medical record etc.. is not considered by the authorities. In that case, order of dismissal for unauthorized absence is not justified and dismissal from service was quashed by Hon'ble High Court. Learned Counsel for the Petitioner has argued that in the present case also the management has stated that Petitioner remained absent and he overstayed for 14 days, did not intimate about his sickness but the documents i.e., medical certificates produced by the management itself prove Petitioner applied for 45 days leave from April, 2002 to May, 2002. He further applied for leave and he remained mentally sick and was under treatment of Dr. G. Suresh Kumar, as

such, it can not be said that he was absent without any valid reason or insufficient grounds. Thus, the punishment of compulsory retirement from service was not justifiable in this case. Not only that medical certificate was not considered by the Enquiry Officer as such, finding of the Enquiry Officer is perverse and no punishment should have been imposed on the basis of such a perverse finding. I am fully in agreement with the argument of the Learned Counsel for the Petitioner that medical certificate of the Petitioner was not considered by the Enquiry Officer nor he has expressed any opinion about the unauthorized absence of the Petitioner as such, the action of management is neither legal nor justified.

16. Learned Counsel for the Petitioner has placed reliance on another recent case law of Hon'ble Supreme Court reported in 2012(1332) FLR 1023 in the matter of Krushnakant B. Parmar and Union of India in which case Hon'ble Supreme Court of India has held that if the finding of the Enquiry Officer does not disclose that unauthorized absence from duty was willful then in that case even if the Petitioner was absent from duty he could not be dismissed from the services. In the present case also there is no finding of the Enquiry Officer regarding unauthorized absence of the Petitioner from duty- nor of willful absence from duty. Thus, in light of this case law, this Tribunal is of the opinion that the Petitioner was not absent from duty willfully, he was forced to remain absent due to his mental and his physical condition. He suffered from jaundice and latter on mental depression for which he took treatment for more than one year from Neuro-psychiatric Specialist. Under these circumstances, the absence of Petitioner was neither unreasonable nor willful nor wanton. Petitioner remained absent for a reasonable and sufficient cause as such, the action of the management is neither legal nor valid. Point No.I is decided accordingly.

17. Point No.II As discussed in the earlier paragraphs, the absence of Petitioner was neither willful nor for any unreasonable or insufficient grounds as such, in the light of case law reported and cited earlier punishment imposed by the management on the basis of perverse finding of the Enquiry Officer is unjustifiable and deserves to be quashed. Point No.II is decided accordingly.

18. Since the action of the management is illegal, arbitrary and unjust, the punishment imposed is disproportionate to the misconduct committed by the Petitioner. He deserves to be reinstated in the services with continuity of services but with 50% of the back wages within two months after publication of this award.

19. The petition is allowed. Compulsory retirement order dated 8-4-2003 is set aside. The management is directed to reinstate the Petitioner in service with continuity of service within two months from the date of publication of award but with 50% of back wages.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 23rd day of April, 2012.

VED PRAKASH GAUR, Presiding Officer

Appendix of evidence

Witnesses examined
for the Petitioner

NIL

Witnesses examined for the
Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 15 जून, 2012

का.आ. 2344.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सीजीआईटीए/1256/04/नया आईटीसी-6/98 पुराना) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-05-2012 को प्राप्त हुआ था।

[सं. एल-12012/71/98-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2344.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. CGITA/1256/04/New (ITC 6/98 Old)] of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bank of India and their workman, which was received by the Central Government on 31-05-2012.

[No. L-12012/71/98-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Binay Kumar Sinha,
Presiding Officer,
CG IT-cum-Labour Court,
Ahmedabad, Dated 3-5-2012

Reference: CGITA of 1256 of 2004 New

Reference: ITC. 6/1998 (Old)

The Chief General Manager
Bank of India, Main Branch,
Kanipith, Surat.

.... First Party

And their workman
Shri Rajendra G. Parikh
202, Deepa Apartment,
Nr. Gokul Row Houses,
Athwalines, Surat-395 007.

... Second Party

For the first party: Shri M.J. Sheth, Advocate
Miss. Mina Shah, Advocate

For the second party: Shri K.B. Mazbudar, Advocate

AWARD

The Appropriate Government/Bharat Sarkar, Ministry of Labour by its order No. L-12012/71/98-IR (B-II) New Delhi dated 29-6-1998 in exercise of power conferred by clause (d) of sub-section 1 and sub section 2 A of Section 10 of the ID Act, 1947 considering Industrial Dispute having been existed between the employers in relation to the Management of Bank of India and their workman Shri Rajendra G. Parikh, referred the dispute for adjudication to the Industrial Tribunal-cum-Labour Court, Surat by formulating the terms of reference under the schedule as follows:—

SCHEDULE

“Whether the action of the management of Bank of India in terminating the services of Shri Rajendra G. Parikh w.e.f. 31-12-1996 is legal and justified? If not, to what relief the said workman is entitled for?”

(2) Both the parties consequent upon receipt of the notice, appeared and filed their respective pleadings viz statement of claim by the workman second party at Ext. 6 and written statement by the management of first party at Ext. 7.

(3) The case of the workman (second party) as per statement of claim is that he was in employment of the Bank of India as a Staff Clerk and was working sincerely and efficiently since July-1977 and has put up more than 19 years of unblemished service he was lastly working in the main branch Kanipith. Surat. He was served with a suspension order dated 29-7-1994 and thereafter followed by the chargesheet dated 26-12-1994 issued by the Disciplinary Authority of the Bank of India. Shri R.C. Shah was appointed as inquiry officer to conduct departmental inquiry. Domestic enquiry was conducted and the enquiry officer submitted enquiry report to the Disciplinary Authority. Then second show-cause notice was issued by the Disciplinary Authority on 6-6-1996. Subsequently order of punishment of dismissal was passed by the Disciplinary Authority on 31-12-1996. The delinquent workman filed an appeal before the appellate authority of the Bank on 31-1-1997 (within 45 days) and he requested for personal hearing in the memo of appeal but no personal hearing was given as per mandatory provision of bipartite settlement. However the appeal of the workman was rejected by the Disciplinary Authority vide order dated 30-6-1996. Further case is that his dismissal order is illegal.

improper and unjust and against the principle of natural justice, the domestic inquiry suffers from infirmities and is also defective, principle of natural justice was not followed and opportunities were not given to the delinquent workman to defend himself. So the domestic enquiry is in valid and the findings given by the enquiry officer in inquiry report is perverted and so the whole enquiry has vitiated. Further contention is that the chargesheet served on the delinquent workman is vague which does not clearly and specifically indicate any alleged misconduct. No charge is spelt out in the chargesheet. In domestic enquiry no iota of evidence against the workman has come to establish the charges against him. Further contention is that a false chargesheet was served on the delinquent workman with ulterior motive to save skin of higher officers of the Bank. It has shown gross negligence by not reconciling the entry of Surat (Main branch) with Gopipura Branch from 28-11-1988 to 22-6-1994 and being careless in performing their duties and intentionally helping Mr. K. J. Adhvaryu to commit the alleged fraud of Rs. 1.01.04.0001- and to cast stigma on the workman's career. Whereas the workman is quite innocent and has been made scape goat to hide real culprit. Further contention is that the copies of relevant documents was not furnished to the delinquent workman during domestic enquiry which were copies to the chargesheet and other documents issued to Mr. K.J. Adhvaryu. More so, he was not supplied with the copies of important documents ask for vide his letter dated 19-9-1995 and thus reasonable opportunities have been denied by the enquiry officer to defend his case in the enquiry. He was also not furnished the copies of reconciliation of statement and queries raised between the Surat main branch and Gopipura Branch from 28-11-1988 to 13-6-1994. Further contention is that he was illegally suspended w.e.f. 29-7-1994 without giving any special reason put him under suspension. Further contention on merits is that there is no material on the record to show that the delinquent workman has committed any misconduct the charge sheet does not spelt out any misconduct. There is absolutely no evidence to show that workman was involved in any acts of commission/omission, the report of investigation officer has no evidentiary value but the enquiry officer in its findings and also Disciplinary Authority has considered investigation report as gospel truth. Further contention is that dismissal of the workman is a colourable exercise of the powers of the Bank and amounts to victimizing and unfair labour practice. Further Contention is that the charges against the workman regarding adding/assisting Mr. K.J. Adhvaryu, Bank Clerk in the alleged fraud of Rs. 1.01.04.000/- . In the chargesheet the total alleged involvement of workman is shown Rs. 45,000 on 1-1-1991 and in encashment of his cheque of Rs. 1.50,000/- for the Bank's client on 13-7-1992 . In the enquiry the alleged fraud of Rs. 1.01.04.000/- has not been proved and so the charge against the delinquent workman of adding/assisting Mr. K.J. Adhvaryu by the workman are totally false. Further

contention is that the domestic enquiry of K.J. Adhvaryu was not conducted in presence of this workman and Mr. K.J. Adhvaryu has not been examined as witness in the domestic enquiry as held against the delinquent workman. Further contention is that as many as 88 staff members including sub staff officers and clerks were involved in the alleged fraud of Mr. K.J. Adhvaryu and enquiries were conducted against them. Out of 4 to 5 clerks 4 clerks were awarded punishment of dismissal without notice while one clerk was given punishment of compulsory retirement and rest of the persons were not even issued any chargesheet simultaneously with the staff clerks and officers and they are still continuing of the service of the Bank. On taking objection by the delinquent workman in this regard only 23 staff members were given chargesheet at later stage for the same charges of adding/assisting Mr. K.J. Adhvaryu but they were given lighter punishment of stoppage of increments and no enquiry was conducted against the remaining staffs and were straightway issued censure or warning letters and still continuing in the service. So action of the Bank is wholly arbitrary and unfair and the punishment awarded to the workman of dismissal without notice is shockingly disproportionate and unduly harsh. Further contention is that Shri K.J. Shah Bank Manager of the Clock Tower branch conducted the domestic enquiry against the delinquent workman but the enquiry officer has not acted impartially rather has shown favour to the management Bank at each and every stage of domestic enquiry and thus the domestic enquiry was not held in accordance with the principle of natural justice. The findings given by the enquiry officer in its report is without application of mind and not reasoned one. The disciplinary authority of the Bank has not considered the past record of the workman while imposing the extreme punishment of dismissal without notice. On these scores prayer has been made by the delinquent workman to declare the punishment order dated 31-12-1996 dismissed without notice w.e.f. 31-12-1996 as illegal and unjust and to set aside the said punishment order and for reinstatement of the workman with continuity in service on original post with full back wages and all benefits and also for cost of this reference case and for any other relief to which the workman is found entitled.

(4) The first party Bank pleaded inter-alia in its written statement (at Ext.7) that the second party workman was in employment of the Bank since 1977 till his dismissal from the Bank. Further denying such contention of the workman that he was honestly, sincerely and diligently working during his tenure of service. The case of the first party is that under the Disciplinary Action initiated against the workman right from his suspension on 29-7-1994 till his dismissal from Bank service w.e. f. 31-12-1996 and also till disposal of his appeal by Appellate Authority vide Appellate order dated 30-6-1997 and that all these process have been followed within frame work of bipartite settlement dated 19-10-1966 amended from time to time.

There was no violation of statutory provision of bipartite settlement. Further case is that departmental enquiry was conducted against the workman as per provisions laid down in the bipartite settlement applicable to the workman and that during the enquiry all reasonable opportunities was given to the workman to defend his case, the workman was defended by his defence representative and the departmental enquiry was conducted as per the laid down procedure in the bipartite settlement. The Enquiry officer conducted the enquiry in proper manner and after considering oral and documentary evidence adduced before the enquiry officer he then submitted his report and findings to the Disciplinary Authority. Thereafter Disciplinary Authority on the basis of charges proved against the workman issue show cause punishment notice proposing punishment of dismissal without notice and on receipt of show cause from the workman the Disciplinary Authority has passed the punishment order dated 31-12-1996. Further case is that the workman was also given personal hearing by the Appellate Authority and the workman was advised by the Appellate Authority to demand for personal hearing on 9-6-1997 but the workman did not appear for personal hearing before the Appellate Authority. Thereafter considering all the points/issues raised by the workman in his memo of Appeal/representation letter dated 31-7-1997 the Appellate Authority rejected his appeal. Further case is that the workman committed an act of misconduct of arranging the funds of Rs. 45,000 from his overdraft account to S.B. Account of Shri K.J. Adhvaryu which has facilitated Shri Adhvaryu to commit fraud on the Bank due to wilful, intentional Act on part of the workman. Because the said K.J. Adhvaryu had committed fraud on the Bank on continuous basis during the period 28-11-1988 to 13-6-1994 to the tune of Rs. 1,01,04,000 at Gopipura Branch. The said act of workman in transferring the funds from own account to the account of K.J. Adhvaryu thereby assisting Shri Adhvaryu causing prejudice to the interest of the Bank to enable him to commit fraud is rightly come under the scope and perview of clause 19.5 (j) i.e. committing an act prejudicial to the interest of the Bank involving financial loss of Rs. 45,000 to the Bank initially and up to Rs. 1,01,04,000 subsequently. It has been denied that the charges leveled against the workman are vague, the workman had no discharge of duty to accommodate Shri Adhvaryu by transferring funds of Rs. 45,000 from his Overdraft account to the S.B. Account of Shri Adhvaryu at Surat main branch and this act on part of the workman is indicative of the ulterior motive of the workman. Had the workman Shri Parikh not assisting Shri Adhvaryu by transferring funds from his account the account of latter one the cheque of Shri Adhvaryu debit note of the branch would have returned back to Gopipura branch due to insufficient fund in the account of Shri Adhvaryu and the misdeed of Shri Adhvaryu would have been definitely exposed and the Bank would not have suffered financial

loss of Rs. 45,000. Further case is that the chargesheet issued to the workman was clear and cannot be construed as vague and ambiguous. Further case is that the chargesheet and suspension order were issued by the Zonal Manager Bombay, Metropolitan Zone and Disciplinary Authority who was a competent authority as per order dated 11-8-1994 of the chairman and managing director of the Bank. Further case is that the documents mentioned by the workman that the copy of bipartite settlement, copy of chargesheet issued to Shri K. J. Adhvaryu are not related to the chargesheet issued to the workman. The mentioned of clause 19. 5 (J) of the first bipartite settlement dated 19-10-1966 is limited only to the extent of showing under which particular clause the workman has committed misconduct. The misconduct which are coming under gross misconduct are in specific in clause 19.5(j) of the first bipartite settlement dated 19-10-1966. More so, the workman has never requested for documents earlier. The workman has also not raised any objection earlier regarding signatory/authority of suspension order and chargesheet issue to him and so now this act on part of the workman is an after thought. As regards conciliation statement workman has attended the conciliation proceeding and is well aware of the fact that the conciliation officer is not providing grounds/statement of conciliation proceedings to either of the party. So, the question of furnishing such documents to the workman does not arise. Similarly queries raised between Surat main branch and Gopipura branch are not related to the charge sheet issue to the workman. More so the workman has not requested any of the document earlier accept in his reply dated 3-7-1996 to the show cause punishment notice i.e after completion of enquiry. Stand of the first party is that all the relevant documents were provided to the workman during the course of domestic enquiry and the workman was defended by the Advocate Shri H.M. Desai and so the workman has no right to say that he was not given sufficient opportunity to defend his case. Further stand of the first party is that suspension order is issued by the competent authority and this order clearly spelt out the circumstance, appearing against the workman to place him under suspension. Further stand is that question of giving opportunity to the workman in respect of his past record before appellate authority does not arise since it is privilege of the Bank. It has been denied to the contention raised by the workman at para 5 that there is no evidence to show that workman was involved in any acts of omission/commission, the charges levelled against workman were proved in the departmental enquiry on the basis of documentary as well as oral evidence brought on the record of the enquiry. Further case is that there was no charged allegation against the workman for fraud of Rs. 1,01,04,000 and the question of its proving in the enquiry against the workman does not arise. It has been denied the plea of the workman that out of the 88 staff members involve in fraud only 5 officers and 5 clerks were issued charge sheet. On the contrary the bank has initiated

appropriate Disciplinary Action against all the involved staff members and were issued appropriate punishment orders and that the action taken against the other staff members is according to the nature of misconduct committed by them and there is no question of discrimination in imposing the punishment on them. Further case is that the domestic enquiry was properly conducted in presence of delinquent workman and his representative and the enquiry officer submitted its enquiry report with findings and the report and findings was forwarded to the workman along with show cause punishment notice dated 6-6-1996. Further case is that the Bank being a financial institution dealing with public money, any fraud committed by its employee is not excusable and in such cases the question of considering past record of the concern employee does not arise. The workman has committed grave and serious act and so the punishment imposed upon him is proper legal and justified. On these scores prayer has been made to upheld the Bank stand in the entire Disciplinary Proceedings initiated against the workman is fair, proper, legal and justified and the punishment order imposed on the workman is appropriate, legal and justified and that this reference haing no merit and that the workman is not entitled to get any relief. On these scores prayer has been made to reject the reference.

(5) The second party workman filed pursis at Ext. 8 challenging the validity of domestic enquiry held against him and praying for deciding as preliminary issue the propriety of the domestic enquiry thereafter the preliminary issue as to propriety of the domestic enquiry was taken up and the second party workman was asked to lead evidence for supporting his such contention that the domestic enquiry held against him is invalid, improper and without following the principle of natural justice and that the findings of the enquiry officer is perverted. The entire enquiry file was produced by the first party. The second party workman also filed the copy of the enquiry papers. The second party workman Rajendra G. Parikh examined himself deposed in oral evidence at Ext. 121 and was duly cross-examined by the first party lawyer. The first party Bank also examined witness Ramesh Chandra at Ext. 127 and the management witness was cross-examined by the second party lawyer. Thereafter order was passed on the preliminary issue as to propriety or otherwise of the domestic enquiry at Ext. 130 by the Industrial Court, Surat by order dated 11-9-2002 and the domestic enquiry held against the delinquent workman Shri Rajendra G. Parikh was held invalid and against the principle of natural justice. From going through the order on the preliminary issue it appears that since the papers demanded by the delinquent workman regarding allegations and charges against the K.J. Adhvaryu was not provided to the workman Shri Rajendra G. Parikh during domestic enquiry so, it was found against the principle of natural justice. And on these scores domestic enquiry was held invalid and improper vide Ext. 130.

(6) Consequent upon deciding the preliminary issue against the management first party holding domestic enquiry invalid, the first party management in order to justified its action so taken against the delinquent workman conducted further enquiry before the Industrial Court. The first party Bank further lead evidence before the tribunal by examining three witness Shri Chimabhai Chaudhary Peon of Bank at Ext. 148, Shri Umeshbhai V. Shroff Ex-Deputy Chief Manager of Bank at Ext. 151 and Shri G. Chandreshkharan Investigating Officer of Bank of India Vigilance Department Mumbai who conducted investigation into the fraud by K. J. Adhvaryu and other bank staff. His evidence is at Ext. 163. Also the entire enquiry file has been brought on the record as materials against the delinquent workman.

(7) In view of the rival contention as per statement of claim and written statement and also as per fresh evidence and materials adduced by the 1st party to justify its action so taken against delinquent workman and oral evidence of the second party workman in denial of justification of the 1st party imposing punishment against him, the following issues are taken up for discussion and consideration.

ISSUES

- (I) Whether the reference is maintainable?
- (II) Whether the first party has been able to justify its action so taken against the delinquent workman, after the order on preliminary issue as to holding of domestic enquiry invalid?
- (III) Whether the punishment imposed upon the second party workman Shri Rajendra G. Parikh is shockingly disproportionate to the gravity of the misconduct and the charge levelled?
- (IV) Whether the workman is entitled to the relief in this case, as claimed?

FINDINGS

(8) ISSUE No. II

It is admitted fact that the delinquent workman (second party) was served with chargesheet dated 26-12-1994 the copy of the chargesheet and other documents including finding of enquiry officer, the second show cause notice reply of the delinquent workman to second show cause notice, punishment order of Disciplinary Authority, Appellate order etc. were filed on behalf of the second party workman as per list at Ext. 15 and to 15/3 is chargesheet issued against the delinquent workman. It is essential to deal with the allegation made in the chargesheet against the delinquent workman for appreciating the fresh evidence and materials produced by the first party during further enquiry before this tribunal. The chargesheet is as follows:— During the course of your duties as staff clerk at Bank's Surat main branch you are alleged to have committed serious misconduct as detail herein in below :

" ... During 28-11-1988 to 13-6-1996 fraud was perpetrated by staff clerk Shri K.J. Adhvaryu by

manipulating Bank's record and destroying/removing cheques and/or debit notes drawn on Surat (main branch) in his joint S.B. Account No. 38344 (where only a meager balance was maintain)" deposited by him at Gopipura Branch in his various accounts detailed above, after credit entries were made in his account and fraudulently withdrew and misappropriated the large amount from Gopipura Branch and cheated Bank to the tune of Rs. 1,01,05,000.

"The allegation/misconduct of the delinquent workman Shri Rajendra G. Parikh has been mentioned as follows:—

"You have actively assisted Shri K. J. Adhvaryu and enabled him to commit the aforesaid fraud during 1988—1994 in as much as you transferred your funds from your own joint overdraft A/c No. 461 with Surat (main branch) to Shri Adhvaryu Joint S.B. Account No. 38344 with Surat (main branch) on 1-1-1991 when the debit note drawn on Surat main branch was sent by Gopipura branch along with Shri K. J. Adhvaryu cheque for Rs. 45,000 in his joint S.B. Account No. 38344 were received at Surat Main branch on 31-12-1990 when there was a balance of only 462.22 in Shri Adhvaryu aforesaid account". The next charge against delinquent is as follows :—

"During period when Shri K. J. Adhvaryu was committing the aforesaid fraud you had done monetary transaction/dealing with him for amounts ranging from Rs. 5,000 to Rs. 1,50,000. On 13-7-1992 you have encashed a bearer cheque for Rs. 1,50,000 through Shri C.K. Chaudhary sub staff of the branch drawn on the joint S.B. A/c No. 13944 of Shri K. J. Adhvaryu in which account a fraudulent credit of Rs. 2,00,000 was given on 10-2-1992 and further during this period you along with Shri K. J. Adhvaryu have jointly started Jewellery business in the name and Style "Krushna Ornaments" at Surat wherein your wife namely Mrs. Meena R. Parikh along with the Mrs. Rekhaben K. Adhvaryu wife of Shri K. J. Adhvaryu were partners". On para 2 of the charge sheet allegation of misconduct is as follows By your aforesaid continuous act of willful and intentional commission/omission you have aided, assisted and enabled Shri K.J. Adhvaryu staff clerk of Bank's Gopipura Branch to commit the aforesaid fraud and cheated the Bank to the tune of Rs. 1.01.04,000. By your aforesaid intentional act you have caused prejudice to the Bank's interest to the extent as stated above. Para 3 of the charge sheet is as follows "your aforesaid act, if proved, would amount to acts of gross misconduct in terms of para 19.5 (J) of the first bipartite settlement dated 19-10-1996 as amended from time to time. which reads as under :

19.5 (J) Doing an act prejudicial to the interest of the Bank your gross negligence or negligence involving or likely to involve the Bank in serious loss.

(9) The connecting documentary evidence regarding the first charge regarding transferring funds from his account to the account of Shri Adhvaryu at Surat Main

branch Ext. 61 is cheque No. 903821 dated 31-12-1990 for Rs. 45,000 issued by Shri K.J. Adhvaryu in favour of Mr. M.K. Patil this account was opened in the Surat Main Branch by Adhvaryu, Ext. 62 is the transfer remittance dated 31-12-1990 of Gopipura branch, Ext. 63 and 64 are the two cheques issued by the delinquent workman Rajendra G. Parikh in favour of Shri K.J. Adhvaryu which are dated 1-1-1991, Ext. 63 is the cheque No. 729217 for Rs. 25,000 and Ext. 64 is cheque No. 729218 for Rs. 20,000, Ext. 60 is the pay in slip dated 1-1-1990 through which an amount of Rs. 45,000 was deposited by the delinquent workman in the saving Bank's account No. 38344, of Shri K. J. Adhvaryu at Surat main branch. Another connecting documents is Ext. 71 which is pay in slip dated 31-12-1990 for Rs. 45,000 in favour of Shri M.C. Patel for his account No. 13944, Ext. 72 is transfer remittance dated 31-12-1990 for Rs. 45,000 of Gopipura Branch. Ext. 109 is extract statement of S.B. A/c No. 38344 of Shri K. J. Adhvaryu of Surat main branch. From scrutinizing the above documents brought into documentary evidence by the first party in this case, it appears that as per S.B. A/c Bank statement of A/c No. 38344 of Shri K. J. Adhvaryu at main branch his balance in the A/c was 462.22 only as on 31-12-1990. From perusal of Ext. 61 which is cheque No. 903821 dated 31-12-1990 for an amount of Rs. 45,000 issued by K. J. Adhvaryu to Mr. M.K. Patel go to speak that in spite of knowing the fact that the cheque amounting of Rs. 45,000 was to be dishonored/bounced back issued by K. J. Adhvaryu in favour of Shri M.K. Patel but instead of it the cheque dated 31-12-1990 of K. J. Adhvaryu was detained at Surat main branch with endorsement pays A/c credited but in fact there was no sufficient amount to clear cheque dated 31-12-1990. Ext. 62 is the transfer remittance dated 31-12-1990 of Gopipura branch regarding transfer of the amount of the 45,000. But since there was only 462.22 in the A/c of Adhvaryu as per Ext. 109 so those documents were detained till 1-1-1991 rather to return back the transfer remittance (at Ext. 62) along with the cheque Ext. 61 with the note of insufficient amount in the S.B. A/c No. 38344 of Shri K. J. Adhvaryu. Ext. 63 and 64 are the two cheques issued by the delinquent workman Rajendra G. Parikh dated 1-1-1991 in favour of Shri K.J. Adhvaryu for transferring total amount of Rs. 45,000 in order to cover up shortage of fund for clearance of the cheque of Mr. Adhvaryu issued in favour of Shri M.C. Patel. Ext. 60 is the filled up pay in slip dated 1-1-1991 for crediting the amount of two cheques 63 and 64 totaling Rs. 45,000 in the S.B. A/c No. 38344 of Shri K. J. Adhvaryu. From going through the statement of S.B. A/c No. 38344 of K.J. Adhvaryu at Surat main branch of 31-12-1990 and 1-1-1991 at Ext. 109 it clearly speaks that on 31-8-1990 Shri K. J. Adhvaryu had deposited Rs. 15,000 in his account and that amount was withdrawn by him on 1, September, 1990 and from 1 September, 1990 his balance was only 462.22 that means on the date of issuing cheque by Adhvaryu on 31-12-1990 the balance in his account was Rs. 462.22 but his cheque was detained for clearance and

in the mean time on 1-1-1991 an amount of Rs. 45,000 was credited into the account of Mr. Adhvaryu by transferring the said amount by the delinquent workman through two cheques amounts 25,000+20,000 through pay in slip. Ext. 60 and thereafter on the same date 1-1-1991 the amount of Rs. 45,000 as per cheque of K.J. Adhvaryu Ext. 61 in favour of M.C. Patel was cleared and thereafter the balance in the account of Mr. Adhvaryu remained 462.22. It has been argued on behalf of the first party that had the delinquent workman not transferred Rs. 45,000 from his account in the account of Adhvaryu, frauds being committed by Shri K. J. Adhvaryu from before would have come to light on 31-12-1990 but due to connivance of the delinquent workman to cover up purposely the fraud being played by Mr. Adhvaryu from before from detection of the fraud. On the other hand it has been argued on behalf of the delinquent workman that out of friendship the delinquent workman had transferred the amount of Rs. 45,000 from his account in the account of Mr. Adhvaryu. Such argument advanced on behalf of the second party workman does not appear to be convincing in view of the partnership deed as per Ext. 105 that the delinquent workman Rajendra G. Parikh and K.J. Adhvaryu had started Jewellery Business in partnership in the names of their wives fully knowing that directly they being Bank's employees cannot entered into any partnership business during their tenure of service in the Bank, so the partnership deed of Jewellery Business was started in the names of their wives. It is also very much question mark that the delinquent workman Rajendra G. Parikh was a clerical staff at main branch Surat of Bank of India and Mr. K. J. Adhvaryu was also a clerical staff posted at Surat Gopipura branch and from their modest earning of monthly pay they cannot afford to start Jewellery Business unless and until there had been illegal flow of income to them. In this context it may be mentioned here that Mr. K. J. Adhvaryu had been dismissed from the service due to proof of the charges and frauds to the tune of Rs. 1,01,04,000 from the period 1988 to 1994. On the other hand the first charge against the delinquent workman is assisting to K. J. Adhvaryu in fraudulent transaction of the amount to the tune of Rs. 1,01,04,000. The aforesaid documentary evidence discussed above speaks a volume that it was due to deep rooted conspired friendship of saving each other and particularly to save Mr. K. J. Adhvaryu in going on committing frauds after frauds in fraudulent transaction of huge amount. The delinquent workman Rajendra G. Parikh added to Mr. Adhvaryu by transferring Rs. 45,000 in his account at Surat main branch to facilitated that the cheque amounting to Rs. 45,000 issued by Mr. Adhvaryu in favour of K.C. Patel may not be dishonored or bounced back for putting Mr. Adhvaryu in sudden trouble and detection of fraud committed by him from earlier stage. In this connection the evidence of the 1st party's witness Umeshbhai V. Shroff retired Chief Manager at Ext. 151 and also evidence of G Chandrashekharan Ex-Bank Officer in Vigilance Department

who was the investigating officer of the frauds committed by K. J. Adhvaryu and others in his evidence at Ext. 163 have supported that the delinquent workman intentionally adding to K. J. Adhvaryu in carrying on committing frauds with the huge amount of Bank's money.

(10) There is also evidence against the delinquent workman both oral and documentary regarding next charge that for covering the frauds being committed by K. J. Adhvaryu the delinquent workman by his efforts was intentionally assisting to Mr. Adhvaryu and in lie of it he was getting monetary benefits from K. J. Adhvaryu. In this regard the relevant documentary evidences are as follows—Ext. 67 is the cheque No. 580082 for an amount of Rs. 2,00,000 dated 10-7-1992 issue by K. J. Adhvaryu in favour of M. M. Patel drawn at Surat main branch regarding his S.B. A/c No. 38344 and Ext. 69 is the transfer remittance dated 10-7-1992 of Gopipura branch for Rs. 2,00,000 Ext. 65 is credit advise dated 10-7-1992 for S.B. A/c No. 13944 for Rs. 2,00,000 at Ext. 66 is transfer remittance for Rs. 2,00,000. Ext. 68 is debit note dated 10-7-1992 for Rs. 2,00,000. Ext. 70 is the cheque No. 174554 dated 10-7-1992 for an amount of Rs. 1,50,000 drawn by K. J. Adhvaryu for self from his account No. 13944 at Gopipura branch Surat. It is admitted fact that the S.B. A/c No. 13944 of K. J. Adhvaryu was at Gopipura branch, Surat and he had drawn the cheque for self of Rs. 1,50,000 but on the back of this cheque there is endorsement of the delinquent workman Shri R.G. Parikh with his signature "please pay to Shri Chimanbhai. The question arises what was reason for writing such endorsement by the delinquent workman Rajendra G. Parikh who was admittedly staff clerk at Surat main branch. In this regard evidence of the sub staff Chimanbhai Chaudhary at Ext. 148 is remarkable. He clearly stated that the said cheque was handed over to him personally by Shri R.G. Parikh as Surat main branch. He is working as a Jamadar with Bank of India main branch, Surat on 13, July, 1992 he was working as a peon in the said branch and that he is personally knowing Shri Rajendra G. Parikh (delinquent workman) as he was working as clerk in the Surat main branch. He further deposed that as a peon he had to give delivery and take delivery of the posts, returned cheques etc to the other branches of Bank of India at Surat. He had also to go to Gopipura branch, Surat for such delivery, at that time Shri K. J. Adhvaryu was working as clerk at Gopipura branch to whom he was personally knowing. He further deposed that on 13 July, 1992 when he was going from main branch to Gopipura branch for delivery of posts Shri Rajendra G. Parikh handed over him a bearer cheque No. 174554 dated 10-7-1992 amounting to Rs. 1,50,000 of the account of Shri K. J. Adhvaryu duly signed by him and the cheque was also bearing signature of Shri Rajendra G. Parikh on the back of cheque as the receiver of the cheque amount and asked him to encash the cheque and bring the amount of Rs. 1,50,000 of the said cheque from Gopipura branch for him. He then deposed that he on request of Rajendra G. Parikh took the cheque from Rajendra G. Parikh and went to Gopipura branch for

delivery of Bank posts etc. He delivered the post at Gopipura branch and thereafter he submitted the aforesaid cheque on the counter and thereafter he collected the amount of Rs. 1,50,000 and the cashier obtained his signature on the back side of the said cheque as receiver of the cheque amount of Rs. 1,50,000 and thereafter cashier at Gopipura branch handed over him Rs. 1,50,000. Thereafter on returning to main branch, Surat, he handed over the entire amount of the said cheque i.e. Rs. 1,50,000 to Shri Rajendra G. Parikh. He proved the signature of Shri K. J. Adhvaryu as a drawer and also prove the signature of Shri Rajendra G. Parikh delinquent workman as receiver of the amount also proving his signature as the receiver of the said cheque amount from cashier of Gopipura branch and the said amount was handed over to Shri Rajendra G. Parikh. He was cross-examined at length at Ext. 148, but nothing could have been gained on behalf of the second party to discredit his testimony. As per entries of the S.B. A/c statement of A/c No. 13944 in the name of K. J. Adhvaryu at Ext. 109, it appears that on 10 July, 1992 an amount of Rs. 2,00,000 was credited in the account of K. J. Adhvaryu A/c No. 13944 from his account No. 38344 running at main branch, Surat that go to prove that on 10-7-1992 K. J. Adhvaryu had drawn cheque of Rs. 2,00,000 in the name of M.N. Patel and as per Ext. 109 it appears that S.B. A/c No. 13944 was running in the names of Manubhai N. Patel and Mr. K.J. Adhvaryu staff at Gopipura branch. This go to show that K. J. Adhvaryu had drawn cheque from his S.B. A/c 38344 of Surat branch for transferring the amount in his joint account at Gopipura branch running jointly in the name of M.N. Patel and K. J. Adhvaryu. From the documents it appears that though there was no sufficient amount in account No. 38344 at Surat main branch for clearing the cheque amount of Rs. 2,00,000 but the amount was transferred in the account No. 13944 at Gopipura branch by virtue of Ext. 67, 68 and 69. And after crediting of the amount of Rs. 2,00,000 in account No. 13944 at Gopipura branch Shri K. J. Adhvaryu staff clerk at Gopipura branch drawn cheque for an amount of Rs. 1,50,000 from his account 13944 and that amount received by the delinquent workman through sub staff Chimanbhai Chaudhary on 13-7-1992. The whole episode speaks a volume that by the efforts of the staffs and officers of main branch, Surat including delinquent workman Rajendra G. Parikh a fraudulent transfer of an amount of Rs. 2,00,000 was made from main branch to Gopipura branch to the credit of account No. 13944 admittedly opened in the name of K.J. Adhvaryu and M.N. Patel and then K. J. Adhvaryu for wrongful gain of Rs. 2,00,000 which was not credit in his account at main branch vide S.B. A/c No. 38344 draw a cheque for self for withdrawing an amount of Rs. 1,50,000 and for providing proceeds out of wrongful gain, the said amount of Rs. 1,50,000 was received by Rajendra G. Parikh delinquent workman via sub staffs Chimanbhai Chaudhary. The endorsement with signature made by the delinquent workman Rajendra G. Parikh on the

self cheque of K.J. Adhvaryu dated 10-7-1997 speaks a volume that eventually the delinquent workman was to gain wrongfully Rs. 1,50,000 out of the wrongful and fraudulent transfer of huge amount of Bank's money by K. J. Adhvaryu (dismissed staff). In this regard Ext. 105 the partnership deed again speaks a volume regarding deep rooted intimacy of Rajendra G. Parikh delinquent workman with K.J. Adhvaryu. The partnership deed for carrying out Jewellery Business in the names of their wives was by way of putting shield for protecting each other and for making investment of the wrongful gain in the so called Jewellery business in the names of their wives.

(11) It is not disputed that the deep rooted conspiracy of the officers and clerical staffs and also sub-staffs were come to light by thorough investigation of the Vigilance Department of the Bank through G.Chandrashekharan Investigating Officer of Bank of India. It has also come in is evidence at Ext. 163 as per allegations made against as many as 87 staffs of Bank of India which is attached at Ext. 123 the affidavits in sir rejoinder filed before the Hon'ble High Court of Gujarat in SCA No. 8762 of 1988. It appears that the name of K. J. Adhvaryu clerk is at Serial No.1 and punishment awarded to him is as to his dismissal from services. At serial No.2 there is name of N.G. Bhatt sub assistant of Gopipura Branch has mentioned regarding allegations in brief and he was dismissed from Bank services, 4th name of Shri P.P. Bhatt officer Gopipura branch who was also dismissed from Bank's services, 5th name is of Shri Rajendra G. Parikh (present delinquent workman) who was also dismissed from Bank service and during the period of his suspension he was posted at Gopipura branch. The clerks at serial No. 6 was also dismissed from Bank service and the cashier named at Serial No. 7 was compulsory retired and the officer D.L. Modi and N. Paniwala, N.V. Patel, J.M. Mehta at serial No.8; 9, 10 respectively were compulsory retired and other officers and staffs were awarded various punishment ranging from reduction of increments, censured warning and caution in accordance with the gravity of the allegation on completion of domestic enquiry against all.

(12) During the fresh enquiry conducted by the first party Bank before the tribunal the evidence of Umeshbha V. Shroff at Ext. 151 has been brought. He is retired Chief Manager of main branch, Surat Bank of India, he was posted from August, 1987 to June, 1992 in the Bank of India main branch, Surat as Deputy Manager and thereafter he was posted as Chief Manager of main branch, Surat from 1993 to 1996. He was knowing Shri Rajendra G. Parikh, the delinquent workman. Through his evidence the relevant documents were marked exhibits as fresh materials on the record. He has duly proved documents at Ext. 60, 61, 62, 63 and 64 and onwards. Vide para 13, 14 and 15, he deposed regarding cash credit facilities to M/s. Gujarat Industrial Truck Ltd. at Surat main branch for 10 years and regarding that the said Gujarat Industrial Ltd. was experiencing

financial difficulties and resulting in cash credits account of Gujarat Industrial Trucks Ltd. was frozen on advised of the Mumbai main branch in the year 1993 his further evidence at para 16 is that when he was working as Deputy Chief Manager (credit) Surat main branch during August, 1987 to June, 1992 several clerks work on cash credits ledgers among them were Shri Rajendra G. Parikh (delinquent workman) and Shri D.C. Patel. Also deposed Shri Rajendra G. Parikh was working on cash credited ledgers keeper for almost one year. At para 17 he deposed from the above documentary evidence, it appears that Shri Rajendra G. Parikh added and assisted Shri K. J. Adhvaryu in committing the fraud. If Shri Rajendra G. Parikh did not have aided or assisted Shri K. J. Adhvaryu and did not have paid the amount of Rs. 45,000 in the account of Shri K. J. Adhvaryu then fraud could have been detected earlier. So, Shri Rajendra G. Parikh intentionally act in the manner which prejudice the interest of the Bank and the act of such assistance and aid is the gross negligence on part of the Rajendra G. Parikh that causing serious loss of Rs. 1,01,04,000 to the Bank. This witness was thoroughly cross-examined by the lawyer of the second party workman. But nothing could have been gained to discredit his testimony that he is falsely deposing against the delinquent workman.

(13) Another important witness which has been examined during fresh enquiry before this tribunal by the first party is Shri G. Chandrashekharan. His evidence is at Ext. 163. He deposed vide para 3 he was working as Investigating Officer at Bank of India, Vigilance Department, Mumbai from 1-6-1992 to 21-7-1995 and that he had received instruction from the Chief Vigilance Officer Head Office on 28-6-1994 to proceed to Surat and to carry out investigation in Gopipura branch fraud case. He then visited Gopipura branch at Surat on 21-6-1994 and carry out investigation for about 2 months. he then submitted investigation report dated 10-9-1994 to Chief Vigilance Officer at Mumbai as well as to the Assistant General Manager Vigilance. He has proved his investigation report produced at Ext. 33. His report is at Ext. 116, 117. Vide para 6 he deposed that Rajendra G. Parikh working as clerk at Surat main branch and Mr. K. J. Adhvaryu was working as clerk at Gopipura branch at the relevant time held indulged in committing fraud in the Bank while Rajendra G. Parikh had actively assisted Shri Adhvaryu in committing frauds. Vide para 8 he deposed that Mr. Rajendra G. Parikh had over draft A/c No. 461 in the joint name with his wife at Surat main branch and K. J. Adhvaryu had joint saving Bank A/c No. 38344 at Surat main branch. Vide para 9 he supporting in his evidence that Mr. Rajendra G. Parikh had issued two cheques of Rs. 20,000 + 25,000 totaling Rs. 45,000 from his over draft account with Surat main branch on 1-1-1991 and both cheques were in favour of Mr. K. J. Adhvaryu and thereby provided funds to be transferred to the joint saving account No. 38344 of K. J. Adhvaryu with Surat main branch whereas

at the relevant point of time there was a meager balance of Rs. 462.62 in the said account of Adhvaryu. His further evidence is that the aforesaid cheques were issued by Mr. Rajendra G. Parikh (delinquent workman) to provide funds to him with cheque No. 5903821 dated 31-12-1990 drawn on Surat main branch in the account of K. J. Adhvaryu. Account No. 38344 for Rs. 45,000 along with debit note No. 12826 raised at Surat main branch transferred by Gopipura branch where the cheque dated 31-12-1990 of Rs. 45,000 was deposited by Mr. K. J. Adhvaryu his evidence is that the above act of Shri Rajendra G. Parikh in providing funds from his overdraft account to account of Mr. K.J. Adhvaryu was found to be with the intention of rendering active assistance and help to K. J. Adhvaryu and thereafter preventing the detection of fraud committed by Mr. K. J. Adhvaryu with the Bank. His further evidence is that Shri Rajendra G. Parikh had alleged monetary transaction ranging from Rs. 5,000 to 1,50,000 with Mr. K.J. Adhvaryu, when Mr. K.J. Adhvaryu was committing fraud in the Bank from 1988-1994 Mr. Rajendra G. Parikh had sent a self cheque for Rs. 1,50,000 drawn at Gopipura branch in the account of Mr. K.J. Adhvaryu account No. 13944 to Shri Chimanbhai Chaudhary sub staff working at Surat main branch and collected cash of Rs. 1,50,000 on 13-7-1992 from the said account of Shri Adhvaryu where Shri Adhvaryu had managed, fraudulent credit of Rs. 2,00,000 on 10-7-1992 he also corroborated the evidence of Chimanbhai Chaudhary at Ext. 148 that the amount of Rs. 1,50,000 was received by Chimanbhai in his signature from the cashier of Gopipura branch and handed over the said amount to Rajendra G. Parikh on 13-7-1992. He also proved the endorsement and signature of delinquent workman on the back of the cheque of Rs. 1,50,000 Ext. 70 that Shri Rajendra G. Parikh under his signature with endorsement wrote "please paid to Shri Chimanbhai". Vide para 11 he deposed that Mr. Rajendra G. Parikh along with the K.J. Adhvaryu had started Jewellery Business in the year 1992 at Surat in the name of their wives as partners in the said business in the name and style of Krishna Ornaments he also proved the partnership deed dated 1-3-1992. It has been given pakka exhibits 105. This witness was cross-examined all length by the lawyer of the second party workman but nothing significant has been gained by the second party to discredit his testimony regarding such evidence against the delinquent workman that with the intention of rendering active assistance and help to Mr. K. J. Adhvaryu in committing frauds of huge amount of Bank's by fraudulent transfer in the account of K.J. Adhvaryu.

(14) Further Ext. 73 it is a cheque No. 160625 drawn by K. J. Adhvaryu in favour of the delinquent workman Rajendra G. Parikh for an amount of Rs. 5,000 dated 3-4-2002, Ext. 74 a cheque No. 113013 drawn by Shri K. J. Adhvaryu for an amount of Rs. 50,000 in favour of the delinquent workman Shri Rajendra G. Parikh dated 30-1-1991 and Ext. 76 is a cheque No. 113064 drawn by

Shri K. J. Adhvaryu in favour of delinquent workman Rajendra G. Parikh dated 4-1-1994 for an amount of Rs. 50,000. These documents speak a volume that the delinquent workman was getting amounts from K. J. Adhvaryu through his account 13944 at Gopipura branch by way of illegal rewards/profits which Shri K. J. Adhvaryu was amassing in his various account opened at Gopipura branch including his account No. 13944 by accumulation of fraudulent transfer in his account without having sufficient funds in his account 38344 running at Surat main branch. Said fraudulent transaction in the account of K. J. Adhvaryu at Gopipura branch was being enabled with the help of officers staffs of both Gopipura and Surat main branch. The management witness at Ext. 163 has corroborated in his evidence to the documentary evidence Ext. 73, 74, 76 also corroborated partnership deed Ext. 105

(15) From the fresh materials and evidence as discussed above coming during fresh enquiry conducted by the first party before the tribunal, I find that all the charges have been proved against the delinquent workman Shri Rajendra G. Parikh as per chargesheet dated 26-12-1994 vide Ext. 15/3. The charge has been proved that the delinquent workman actively assisted Shri K. J. Adhvaryu and enabled him to commit the frauds during 1988-1994 in as much transferring Rs. 45,000 from over draft A/c No. 461 with Surat main branch to Shri Adhvaryu joint S.B. A/c No. 38344 with Surat main branch on 1-1-1991 with the debit note drawn at Surat main branch was sent by Gopipura branch along with Shri K. J. Adhvaryu cheque of Rs. 45,000 in his joint S.B. A/c No. 38344 were received at Surat main branch on 31-12-1990 when there was a balance of only 462.22 in Shri Adhvaryu account. Further the second charge has also been proved against the delinquent workman that during the period when Shri K. J. Adhvaryu was committing the aforesaid fraud Shri Rajendra G. Parikh had done monetary transaction which dealings with him for amount ranging from 5,000 to 1,50,000 and that on 13-7-1992 Shri Rajendra G. Parikh encashed a bearer cheque of Rs. 1,50,000 through Shri C.K. Chaudhary sub staff of the branch drawn on the joint S.B. A/c No. 13944 of Shri K.J. Adhvaryu in which A/c a fraudulent credit of Rs. 2,00,000 was given on 10-7-1992 and further charge is also proved that during this period Shri Rajendra G. Parikh along with Shri K.J. Adhvaryu started Jewelry Business in the name and style Krishna Ornaments at Surat in his wives name along with in the name of K. J. Adhvaryu's wife. Ext. 105 is the partnership deed. It has been proved and corroborated by the first party witness G. Chandreshkharan at Ext. 163 further go to prove gross misconduct on part of the delinquent workman. The further charge has also been proved that the delinquent workman by continuous act of willful and intentional commission/ omission added/assisted and enable Shri K.J. Adhvaryu staff clerk of Bank's Gopipura branch to commit the fraud and cheated the Bank to the tune of Rs. 1,01,04,000 and the

delinquent workman by his such intentional act caused prejudice to the Bank's interest, certainly such proved gross misconduct is as per bipartite settlement at clause 19.5 (1) "during any act prejudicial to the interest of the Bank or gross negligence or negligence involving or likely to involve the bank's in serious loss".

(16) On behalf of the second party workman Shri K.B. Mazburdar advocate argued that there is no cogent and connecting evidence or there is no direct evidence to prove any of the charges against the delinquent workman Shri R.G. Parikh. It has been argued that the domestic enquiry vitiated and the management of the Bank during fresh enquiry before this tribunal could not be able to justify the action so taken against the delinquent workman. He in his argument also attacked to the various charges but in fact could not convince to this tribunal to the chargesheet dated 26-12-1994 at Ext. 15/3 which is so elaborated can not be said to be vague and ambiguous. In his arguments Mr. Mazburdar tried to convince that arranging transfer of money by the delinquent workman in the account of K. J. Adhvaryu in Surat main branch go to show single instance coming against delinquent workman and it can be taken into account that out of intimacy the delinquent might have transferred Rs. 45,000 in the account of K. J. Adhvaryu and that transaction do not connect that delinquent workman was intentionally assisting in committing frauds after frauds by K.J. Adhvaryu. On the other hand Mr. M. J. Sheth, Advocate, appearing for the first party pointed towards series of transaction of money by K. J. Adhvaryu in favour of delinquent workman that K. J. Adhvaryu transferred 1,50,000 on one occasion, then 5,000, then 15,000 and also 50,000 in favour of the delinquent workman Rajendra G. Parikh, and those transaction go to connect that Mr. K.J. Adhvaryu was getting fraudulent transfer of money in his account at Gopipura was imparting illegal profits in favour of Shri Rajendra G. Parikh through different cheques for accumulating wrongful gain of the Bank's money through fraudulent transfer. Attention has been drawn by Mr. Sheth towards evidence of Mr. Chandrashekharan at Ext. 163 Umesh Shroff at Ext. 151 at para 16 of evidence where the first party witness clearly stated that Shri Rajendra G. Parikh was working on cash credit ledger-keeper for almost one year and in this way Shri Rajendra G. Parikh was assisting intentionally in fraudulent activities of K. J. Adhvaryu. In view of the discussions made above, I find that the arguments advanced by Shri K. J. Mazburdar for proving innocence of the delinquent workman has no leg to stand in view of the argument advanced by Mr. M. J. Sheth coupled with series of documentary as well as oral evidence of the first party corroborating to each other to show preponderance of probabilities in prove of the charges leveled against the delinquent workman. In such view of the matter such arguments advanced by Mr. K. J. Mazburdar that the charges in the chargesheet issue to the delinquent workman are based on suspicion and surmises and not on any legal evidence, has no leg to stand.

(17) On behalf of the second party workman several case laws have been cited to support the second party's stand in this case. His case law cited is reported in 2010 LLR 494 SC (LIC of India and another V/s Rampal Singh B Sen) on the point that mere admission of documents or marking of exhibits on it does not amount to its proof admission of documents may amount to admission of contents but not its truth. In the instant case the first party has duly proved the entire documentary evidence by marking of pakka exhibits and the fresh materials and evidence of as many as there persons as the first party witnesses at Ext. 148, 151 and 163 have fully corroborated on those documents given pakka exhibits given in this case. So this case law is not helpful to the second party. Further case law reported in 1987 SCR (1) 458 is also not applicable in the facts and circumstances the instant case, case law cited in 2003 (1) LLR 871 is also not applicable to the facts and circumstances of this case and not at all supporting the case of the delinquent workman. The case law cited on behalf of the second party reported in 2007 (112) FLR 1226 Karnataka High Court in the case of North East Karnataka Road transport Corporation Gulbarga and C.K. Dymappa in which their lordship held that the domestic enquiry proceeding found to be unfair and employer did not chose to file any evidence to substantiate the charge against the delinquent officer has to be totally ignored. But in the instant case the employer first party Bank after passing order by the tribunal at Ext 130 that the domestic enquiry has vitiated has taken opportunity to justify its action against the delinquent workman, by conducting fresh enquiry before tribunal by adducing fresh materials and evidence at Ext. 148, 151 and 163 together with documentary evidence Ext. 60 to 109 go to support the charge at Ext. 15/3 against the delinquent workman and so the fresh materials and evidence coming against the delinquent workman has been discussed and scrutinized in the foregoing paragraphs to be a valid piece of evidence for justifying the action so taken against the delinquent workman. So, in the fact and circumstance the case laws cited on behalf of the second party are not helpful to the second party workman. Further case law relied upon by the second party is not applicable in the instant case. The second party has relied upon a case law reported in 2010 (3) LLR 108 of Gujarat High Court in which the point to be noted is that "departmental enquiry held against the delinquent employee is vitiated, whenever it is conducted contrary to principles of natural justice i.e., whenever only Vigilance Officer is examined in the enquiry but other witnesses whose statement were recorded by Vigilance Officer are not examined in the enquiry and still their statements are relied on by the enquiry officer and no opportunity is given to the delinquent workman to cross-examine such witness". In the instant case the facts is quite otherwise the enquiry was vitiated only on the ground that delinquent workman Shri R.G. Parikh had asked for

charge report against the co-employee K.J. Adhvaryu, the E.O. refused to provide that paper, however the workman subsequently had submitted all these papers connected to K. J. Adhvaryu during course of enquiry, but since the prayer for furnishing those papers was not fulfilled in the enquiries, so, on this scores alone it was held that the principles of natural justice was not followed and enquiry was vitiated. But in the instant case the delinquent workman and his representative and even lawyer had all along present during course of proceeding and cross-examined management witness the delinquent workman had not challenged the illegality of the enquiry officer of the procedural defectiveness of conducting domestic enquiry rather only on violation of principle of nature justice that some documents connecting the charge against the co-staff of Gopipura branch Mr. K.J. Adhvaryu had not been provided to the delinquent workman Mr. Parikh, the domestic enquiry was vitiated. However even after vitiating of the domestic enquiry, the first party Bank has been able to conduct fresh enquiry successfully before the tribunal by adducing fresh materials and evidence for justifying its action so taken against the delinquent workman. So, the above case law is also not helpful to the second party workman. The case law relied on by the second party reported in 2010 (III) LLR-122 of the Gujarat High Court in the case of Manager Raghuvir Synthetic Ltd. Premram Chandra, the case law reported in 2010 CLR 159 Bombay High Court the case of A.S. Manjrekar V/s Bombay port trust and another, Case law reported in 2010 LLR 93 SC in the case of M/s. Reetu Marbles V/s Prabhakant Shukla, the case law reported in 2010 LLR 97 SC in the case of Jaipur Vidyut Viran Nigam Ltd., & Ors. V/s Nahu Ram on the points of reinstatement and backwages on vitiating of domestic enquiry are not at all applicable in the fact and circumstances of the case. Because in the facts and circumstance of the case the management of Bank through fresh enquiry before the tribunal and by adducing fresh materials has been able to prove gross misconduct on part of the delinquent workman Shri R.G. Parikh for justifying the action so taken against the delinquent workman.

(18) On behalf of the first party reliance has been placed upon the case law reported in (1) N.N. Rao V/s Greaves Cotton & Company and other 1973 1 LLJ. P. 81 (Bombay High Court), (2) S.K. Awasthy V/s M.R. Bhope, Presiding Officer, First Labour Court & other 1994 1 CLR p. 254 (Bombay High Court), (3) Union Bank of India V/s M.L. Kureel & another 1995 1 LLN p. 884 (All. H.C.), (4) Kendriya Vidyalaya Sanghathan & Another V/s H.C. Sharma 2005 SCC (L. & S) p. 270, (5) Life Insurance Corporation of India V/s R. Dhandpani 2006 1 LLJ p. 329 (S.C.) for discarding such arguments of the second party on vagueness of charges and also on point of the standard of prove required under domestic enquiry or enquiry conducted before the Industrial Tribunal wherein it has been held that the standard of prove required to be applied is of preponderance of probabilities and not as of prove beyond all reasonable doubt as required in Criminal Trial. The first party has also relied upon the

case law on the point on the argument advanced by the second party regarding his reinstatement that a Bank employee lost confidence of his employer and that cashier godown keeper of the petitioner Bank (Union Bank of India) was found guilty of forgery and submission of inflated medical bills was dismissed. It was held cashier of Bank is in a position of trust and confidence and hence Bank in this case is entitled to invoke and plead loss of confidence to resist reinstatement of respondent employee thought amount involved in forgery is only a sum of Rs. 100, what is material is gravity of charge and not insignificant of amount involved in the charge of forgery and submission of inflated medical bills is a serious charge and cannot be ignored for the purpose of directing reinstatement. 4th case law cited on behalf of the first party 2005 Supreme Court case (L & S) 270 on the point of back wages and reinstatement for discarding point of back wages and reinstatement of delinquent workman as argued by the second party, 5th case law relied upon on behalf of the first party is on the point under section 11 (A) of ID Act that power should be exercised judiciously by the Labour/Industrial Tribunal.

(19) After careful consideration on the fresh materials and evidence coming in fresh enquiry before the tribunal and also in view of the arguments advanced by the both sides, the case laws relied upon by both sides, I am of the considered view and so I find and hold that management of first party Bank of India has been able to justify its action so taken against the delinquent workman (second party) in taking action against him for the prove of gross misconduct in clause 19.5 (J) of the bipartite settlement 1966 dated 19-10-1966 and the action on part of the delinquent workman was prejudicial to the Bank's interest and so the Disciplinary Authority after giving reasonable opportunity of being heard and also following principle of nature justice issuing second show cause notice to the delinquent workman eventually awarded the punishment of dismissal without notice. This issue is therefore decided in favour of the first party Bank and against the second party workman.

(20) **ISSUE NO. III** From the materials on the record it has come that the main allegation of fraud and misappropriation of money to the tune of Rs. 1,01,04,000 by fraudulent transfer was against K.J. Adhvaryu staff clerk of Gopipura branch, Surat who was dismissed without notice in separate departmental enquiry held against him. Likewise some officers and clerks staffs were also dismissed including the delinquent workman Shri Rajendra G Parikh for intentionally assisting and facilitating to K. J. Adhvaryu during period 1988 to 1994 for perpetrating fraud by K. J. Adhvaryu by manipulating Bank's record and destroying/removing cheques and or debit notes drawn at Surat main branch for misappropriating and cheating the Bank to the tune of Rs. 1,01,04,000 as many as 5 staffs and officers of the Bank were dismissed and some of the staffs and Bank officers were compulsory retired and several officers and staffs were punished by withholding increments and

several staffs were censured and given the warning caution according to the gravity of their misconducts. Such arguments advanced on behalf of the second party that the main culprit was Mr. K. J. Adhvaryu who had amassed huge amount of 1,01,04,000 through fraudulent transaction in comparison to the misconduct of Mr. K.J. Adhvaryu the misconduct on part of the delinquent workman Shri R.G. Parikh is not so serious for awarding punishment of dismissal. On these scores it has been further argued on behalf of the second party for either setting aside the order of dismissal and for reinstatement of the second party workman with full back wages or for providing modified sentence either of censure or the warning or stoppage of increments. On the other hand it has been argued vehemently on behalf of the first party that conspiracy was so deep rooted that as many as 87 Bank's staffs ranging from the category of officers, clerks and cashiers and sub staffs were detected to have provided intentional assistance and conniving with K.J. Adhvaryu for putting the Bank to serious loss of money. It has been argued that some officers and other clerical staffs were also dismissed for giving intentional assistance and also facilitating K.J. Adhvaryu in going on committing frauds and illegal transfer of the money to the tune of Rs. 1,01,04,000 and the delinquent workman was also one of the important link for providing intentional assistance facilitation at stage to stage for enabling K. J. Adhvaryu to wrongful gains and causing huge wrongful loss to the Bank's money and so the proved misconduct on part of the delinquent workman is not of such nature to attract the provision of 11 A ID Act for interfering in the order of punishment passed by the Disciplinary Authority dated 31-12-1996.

(21) Considering all the facts and circumstances, I am of the considered view that there is no any ground to make interference in the order of punishment of dismissal of the delinquent workman from service without notice so passed by the Disciplinary Authority and also concurred by the Appellate Authority. I do not also find that in any way the order of dismissal imposed upon the delinquent workman is disproportionate to the gravity of charges levelled against him. This issue is accordingly decided in favour of the first party bank and against the second party workman.

(22) ISSUE NO. I AND IV

In view of the findings given to Issue No. II and III in the foregoing paragraphs, I further find and hold that this reference is not maintainable and the second party workman Shri Rajendra G. Parikh is not entitled to get any relief in this case. This reference is accordingly rejected on contest but without cost. This reference is answered accordingly in favour of the first party that the action of the management of Bank of India in terminating the services of Shri R.G. Parikh w.e.f. 31-12-1996 is legal and justifiy.

This is my award

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 15 जून, 2012

क्र.आ. 2345.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध नियोजकों और उनकी कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 27/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-6-2012 को प्राप्त हुआ था।

[सं. एल-12012/16/2004 आई आर (बी.-II)]

शीश राम; अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2345.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2004) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 4-6-2012.

[No. L-12012/16/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 27 of 2004

Between --

Sri Kunwar Pal Singh.
Son of Sri Kanhaiya Lal.
Resident of Mohlla Gandhi Nagar.
Post Jaithara.
District Etah.

And

The Deputy General Manager.
Canara Bank.
Canara Bank Circle Office.
Vipin Khand Gomti Nagar.
Lucknow.

AWARD

1. Central Government Mol., New Delhi vide notification no: L-12012/16/2004-IR (B-II) dated 31-5-2004 has referred the following dispute for adjudication to this tribunal --

2. Whether the action of Deputy General Manager, Canara Bank Lucknow, in giving compulsory retirement to Sri Kunwar Pal Singh son of Sri Kanhaiya Lal vide order

dated 3-6-2003 is legal and justified? If not to what relief the concerned workman is entitled?

3. Brief facts are -

4. It is alleged by the claimant Sri Kunwar Pal Singh that he was appointed in the year 1974 on the post of clerk in the Canara Bank. During his posting he has been transferred to other branches but his work and conduct was found satisfactory. The claimant is living in the town byname Jaithara in District Etah. It is stated that he being a member of scheduled caste the officers and the officials of the bank feel animosity against him and were in search of an opportunity to punish him by hook or crook. Due to this animosity opposite party served a charge sheet dated 20-5-2002 upon him without conducting preliminary inquiry and without any basis; so he was suspended. The opposite party appointed an inquiry officer Sri M.P. Gupta to conduct the inquiry on the above charge sheet. It is stated by the claimant that the officers of the opposite party by way of adopting discriminatory tactics as also without providing him any natural opportunity of being heard and by swaying away with the officer of the bank have taken an ex-parte decision and the inquiry officer had submitted his inquiry report before the disciplinary authority. It has also been claimed by the workman that the entire procedure adopted by the opposite party bank is against the principles of natural justice and as such cannot be sustained in the eye of law and as such the whole action in the name of disciplinary action is vitiated being against the rules of natural justice.

5. It is stated that whatever the allegations levelled by the opposite party against him that he was present on 11-12-90, when the money was drawn by two alleged persons by name Sri Adi Nath Pandey and Anil Singh alleging to be the Staff of Canara Bank Dumri Branch and when they approached Civil Lines Branch Etah of Canara Bank for a remittance of Rs.3,00,000 by tendering a request letter purported to have been issued by the branch Manager of Dumri Branch of District Etah, whereas the claimant was not present at the branch along with the persons or individually, even he does not know about this incident.

6. The Opposite party has lodged a criminal report on 12-12-90, wherein his name was not included. The criminal court in case no. 542/90 after trial acquitted him on 13-11-2001 finding that the whole storey was unbelievable.

7. When a case had been decided by a criminal court after full trial, conduction of a departmental inquiry by the bank on the same facts is against the principle of res-judicata and is also against the settled provisions of law, whereas no appeal has been filed by the opposite party.

8. That the disciplinary authority on the basis of the inquiry report retired the workman in the name of

compulsory retirement vide order dated 19-6-2003, making it effective with effect from 3-6-2003, which is unlawful and arbitrary and against the principle of natural justice.

9. It is also alleged by the claimant that the inquiry officer was neither fair nor just in as much he has not recorded his statement in accordance with the provisions of evidence act nor has given him any opportunity to be examined by the opposite party and was the puppet at the hands of the management, therefore any report submitted by him in the name of inquiry report against the claimant is a waste paper and cannot be acted upon under any circumstances as it is against the rules of natural justice.

10. On the basis of above it has been prayed that the order dated 3-6-2003 be declared as illegal and the management be directed to reinstate the workman with full back wages, continuity of service and all consequential benefits.

11. Opposite party has filed the written statement. The facts alleged by the opposite party are that on 11-12-90 two persons posing themselves to be Adinath Pandey clerk Canara Bank Dumri Branch and Anil Singh sub Staff of the same branch approached the Civil Lines Branch, Etah of Canara Bank for remittance of Rs. 3, 00,000 by tendering a request letter purported to have been issued by Manager of Dumri Branch. On the basis of said letter the cash remittance of Rs. 3, 00,000 was permitted by Civil Lines Branch Etah which was received by the said aforesaid two persons. On 12-12-90 when Sri S. S. Gupta the then officer of Civil Lines Branch of Etah met Sri Khyali Ram Verma of Dumri Branch it was revealed that Dumri branch has not sent any staff member for the above cash remittance nor the said amount of Rs. 3, 00,000 has reached at Dumri Branch and as such FIR was lodged by the bank immediately.

12. It is stated that although, the claimant was then posted at Jaithara Branch of Canara Bank, but he was present at Civil Lines Branch Etah at the time of cash remittance on 11-12-90. As such the officials of Civil Lines Branch Etah went along with Sri R V Kasture, Manager of Jaithara Branch with police officials to the house of the claimant for interrogation in the night 12-12-90. During interrogation the claimant confessed his guilt, he told that the two persons who have gone to Civil Lines Branch Etah for cash remittance were actually Sri Alok Sengar and Sri Jai Chand both constable of police station Jaithara where the claimant was posted. Rs. 2,21,800 out of Rs. 3,00,000 remitted fraudulently was recovered at the instance of the claimant from the dicky of his motor cycle kept in the verandah of his house in the presence of the bank official. The claimant further confessed that out of remaining Rs.78,200, Rs. 200 was spent in a party and Rs.78,000 were taken by Sri Jai Chandra and Sri Alok Sengar said constables. The claimant was then placed under suspension with effect from 18-1-91 by the bank.

The police authorities after investigation had filed charge sheet. Amongst other the claimant was acquitted by getting benefit of doubt. Thereafter the bank initiated departmental action against the claimant alleging that there is no bar for initiating a departmental action even in a case of acquittal by criminal court as the strict rules of evidence are not applicable and the degree of proof is required in the departmental inquiry is not the same. In the mean time the claimant filed a writ petition before the Hon'ble High Court seeking a directing to quash the suspension order and the explanation letter dated 9-3-2002, wherein the Hon'ble High Court passed an interim order dated 22-4-2002 (copy enclosed) in which it was directed to pay current salary and allowances to the claimant. The High Court also directed the bank to complete the disciplinary proceedings against the claimant expeditiously. The bank duly complied with the orders of the Hon'ble High Court and paid him salary and allowances. However, a charge sheet No. so and so dated 20-5-2002 was issued to the claimant for conniving with others and perpetrating fraud upon the bank. Thereafter due departmental inquiry was conducted to inquire into the charges leveled against the claimant, where in the opposite parties have complied with the provisions of natural justice in providing full opportunity to the workman for his defense in the inquiry. The claimant was defended by Sri Khosla Special Assistant who is a senior union leader. He cross examined all the witnesses produced by the opposite and the witness appeared from defense side. After conducting the departmental inquiry the enquiry officer the E.O. submitted his finding dated 24-9-2002 holding the claimant guilty of the charges. The finding of the EO as served to the claimant or submissions. The claimant submitted his submissions to the findings of the EO, which was duly considered and after giving personal hearing to the claimant the punishment of compulsory retirement was imposed upon the claimant vide proceeding No. so and so dated 27-5-2003. The said punishment proceeding were served upon the claimant on 3-6-2003 and as such he has ceased to be in the services of the bank with effect from 3-6-2003. The punishment imposed is just fair and commensurate with the gravity of the misconduct proved in the inquiry. It is also stated that the claimant has not yet availed the remedy of departmental appeal to him and as such the present industrial dispute is also premature and should be closed.

13. It is also submitted by the bank that the inquiry officer was not biased against the claimant and he has conducted the inquiry observing the principles of natural justice and giving full opportunity of his defense therefore, there is no substance in the claim of the claimant. As such it is absolutely devoid of merit and the claim is liable to be rejected out rightly on merit or otherwise.

14. Rejoinder has also been filed by the workman wherein nothing new has been pleaded except reiterating the pleadings already given in the statement of claim.

15. Both the parties have filed documentary as well as oral evidence.

16. Claimant has filed certain certified copy of the criminal case 542/99 regarding his acquittal. He has also filed copy of reply given to the disciplinary authority after the findings of the enquiry officer was received by him. He has also filed copy of representation addressed to the disciplinary authority dated 19-4-2003, copy of statement of witnesses Suresh Veer Singh, Yatindra Kumar Goswami and other witnesses given before the inquiry officer. Opposite party has filed 19 documents per list dated 15-4-2005. These are suspension proceedings, letter addressed to CSE, Charge sheet issued to CSE, Reply of CSE to the charge sheet, proceeding regarding appointment of inquiry officer, inquiry proceedings with effect from 3-7-2002 till 16-8-2002, written brief submitted by both the parties, finding dated 24-9-2002 submitted by the inquiry officer, letter forwarding the finding of the enquiry officer to the CSE, submission of CSE to the findings of the enquiry officer, letter addressed to CSE proposing the punishment and fixing a date for personal hearing, on the proposed punishment, letters of CSE requesting for postponement of personal hearing of disciplinary authority in respect of personal hearing given to CSE and his submissions, proceedings dated 27-5-03 imposing punishment on CSE. Documents which were produced during the inquiry have been filed which are as below—

- (a) Cash remittance letter no.dated 11-12-90 purported to have been issued by Dumri Branch MEX-1.
- (b) Debit Slip dated 11-12-90 of Civil lines Etah Branch for Rs. 3 lacs MX-2.
- (c) Cash Seizure memo dated 13.1.90 MEX-3.
- (d) Statement of AD Singhal Mex.4
- (e) Statement of Sri S.S. Gupta the officer Civil lines Etah branch MX-4.
- (f) Statement of Sri Khyali Ram Verma officer of Dumari Branch MEX.6.

17. Defense documents which were considered order of the Hon'ble High Court dated 22.04.02 DEX-1 Investigation report submitted by Sri S K Sharma, the then manager of Civil lines Branch Etah DEX-21 Judgment in criminal case no.542 of 99 State versus Kunwar Pal Singh passed by CJM, Etah DEX-3.

18. Both the parties have adduced oral evidence.

19. Claimant has adduced himself in evidence as W.W.1 Kunwar Pal Singh.

20. The opposite party has adduced Sri M K Gupta, Branch Manager as MW1 Sri S S Gupta, Manager Canara Bank as M.W.2 Sri Khyali Ram Verma is M.W.3 Sri Ramesh Vardhanan is M.W.4.

Heard and perused the record.

21. This is the contention of the claimant that the domestic inquiry which was conducted was not just and fair. Proper opportunity of defense was not granted, so inquiry is vitiated.

22. This being a case of compulsory retirement, I have given due thought to this objection, though no such preliminary issue was framed but still at the time of final arguments I have examined the fairness of the domestic inquiry.

23. Before coming to, whether there was any breach of in conducting the inquiry for want of applicability of the principles of natural justice or not, I would like to reproduce the facts of this case which have been alleged in the written statement as well as narrated by the bank witnesses in their statements on oath.

24. It is a fact that on 11-12-90 two persons posing themselves to be Adinath Pandey, clerk Canara Bank and Anil Singh sub staff Canara Bank Dumri Branch approached the Civil Lines branch at Etah for a remittance of Rs.3 lacs by tendering a request letter purported to have been issued by the management of Dumri Branch and on the basis of the said letter the cash remittance of Rs.3 lacs was permitted by Civil Lines Branch of the Bank which was received by the said two persons. On 12-12-90 when Sri S S Gupta then officer of Civil Lines Branch of Etah met Sri Khyali Ram Verma of Dumri branch it was revealed that Dumri branch has not sent any staff member for the above cash remittance nor the said amount of Rs. 3 lacs had reached the Dumri Branch. As such immediately an FIR was lodged in the matter by the bank.

25. This fact has not been challenged by WR which seems to be proved by the statement of witnesses of the opposite party.

26. Now the allegation of the opposite party is that although the workman concerned was then posted at Jaithara Branch of the bank but he was present at Civil Lines Branch Etah at the time of cash remittance on 11-12-90. As such the official of civil lines branch Etah went along with Sri R V Kasturey manager of Jaithara branch and police officials to the house of the workman of concerned workman for interrogation in the night between 12/13-12-90.

27. It is further stated that during interrogation the claimant concerned confessed and told that the two persons who have gone to Civil Lines Branch Etah for cash remittance were actually Sri Alok Sengar and Sri Jai Chand both constables of Police Station Jaithara. It is stated that the concerned workman was posted at Jaithara Branch. On search Rs.22,1800 out of Rs.300000 was recovered from the Dickey of the motor cycle of the claimant kept in verandah of his house and confessed his guilt in the presence of the bank officials his guilt.

28. It is stated that in the writ petition the Hon'ble High Court has directed the bank to complete the

disciplinary proceedings against the workman concerned expeditiously, therefore, a due departmental inquiry was conducted and concluded against the CSE. In the departmental inquiry the principles of natural justice were fully complied with the workman was defended by Sri Khosla Special Assistant who is a seasoned union leader. He cross examined all the employers witnesses and produced documents and the witness from the defense side. After conducting the DE enquiry officer submitted his finding dated 24-9-02 holding the concerned workman guilty of the charges leveled against him in the charge sheet. The finding of the inquiry officer was served upon the workman for submission. The workman concerned made his submissions to the finding of enquiry officer vide letter dated 12-10-02. Submission of the workman were duly considered, personal hearing was also granted and then the punishment of compulsory retirement was imposed upon the concerned workman vide order dated 27-5-03.

29. I have perused the whole inquiry proceedings. Opposite party has produced the inquiry officer in evidence as MW.1. He has fully elaborated the whole procedure which was adopted. Through cross examination has been done and nothing has come out in his statement which makes his statement unbelievable. There is no such imputation against the inquiry officer, when he was conducting the inquiry.

30. The authorized representative for the workman has placed an argument that there is a variation in the statement of Sri S.S. Gupta which is exhibit E.5 given before I.O. and statement of Sri A D Singhal.

31. I have given due thoughts to this contention. I have gone through the statement of Sri S S Gupta which was recorded before the inquiry officer also. At page no.12/28 he has specifically stated that at the time of cash remittance Mr. KP Singh (CSE) was also present in the branch and I saw him standing at the counter and he also came to him.

32. Now it was for the inquiry officer to draw his inference. During the inquiry strict principles of evidence act are not applicable and the degree of proof is not the same which is required in criminal trial. In the inquiry it has to be seen whether a fair opportunity of defense was granted or not. In this respect I have examined the statement adduced by W.W.1 the claimant. He has stated that he has not filed any complaint against the inquiry officer. He remained present on each and every date of inquiry. He also admitted that defense representative was engaged and has also admitted that he produced 5 witnesses in defense along with documentary evidence. He also admitted that after the inquiry he was also served with a notice and he was also given a personal hearing.

33. In such situation I do not find that any violation of principle of natural justice and hold that the inquiry

against the delinquent employee has been conducted fairly and properly.

34. This is also the contention of the claimant that he has been acquitted in the criminal case, therefore, he cannot be charge sheeted on the same matter of issue no disciplinary proceedings can be initiated and adverse inference cannot be drawn against him after acquittal.

35. He has placed reliance upon a decision reported in JT 1999 (2) SC 456 Captain M. Paul Anthony versus Bharat Gold Mines limited and others.

36. Whereas the opposite party has placed reliance upon a number of decisions such as 2006 LLR 3861 Allahabad High Court M/s. Road Transport Corporation Private Limited versus P O Labour Court Dehradun and another. In this case on charge of fraudulently withdrawing the amount of company by committing breach of trust and negligence by the workman and departmental inquiry was conducted wherein labour court re-appreciated the evidence and imposed a minor punishment of stoppage of increment. The Hon'ble court held that where the inquiry officer have recorded the findings of guilt it is well settled view that if two views on the same evidence are possible the labour court or any tribunal would not have jurisdiction to take the other view. The labour court also cannot act as a court of appeal and re-appreciate evidence in a case where it finds that otherwise inquiry was fair and proper and there was some material to support the findings recorded. In this case another case which was referred in Government of Tamil Nadu versus Raja Pandiari AIR 1995 SC 561, the Hon'ble Apex Court held—where there is some relevant material which disciplinary Authority has accepted and which reasonably supports the conclusion reached by it, the tribunal cannot review the same and reach at a different conclusion.

37. Another case cited by opposite party is 2010 LLR 859 Bombay High Court A.S. Manjrekar versus Bombay Port Trust and another. It has been held that if an employee had been acquitted on a criminal charge the same by itself could not be a ground not to initiate a departmental proceeding against him or to drop the same in the event of an order of acquittal is passed. It is also held that yardstick and standard of proof in a criminal case is different from the one in disciplinary proceedings. While the standard proof in a criminal case is proof beyond all reasonable doubt, the standard of proof in a departmental proceeding is preponderance and probabilities. In a domestic inquiry all materials which are logically/probative including hearsay evidence can be acted upon provided it has a reasonable nexus and credibility.

38. Therefore, the decision cited by the claimant where inquiry conducted was not a full fledged inquiry but was an ex-parte departmental proceeding wherein the Hon'ble Apex Court considering the facts and circumstance

of that case found that in such circumstances it will not be proper that this ex-parte proceeding should stand.

39. Considering the facts and circumstances of the present case departmental inquiry has not been found to be vitiated and it was full and fair departmental inquiry which was initiated after the order of the Hon'ble High Court, as the claimant has gone to the Hon'ble High Court.

40. Even then the opposite party has produced whole evidence to prove the charges against the workman. They have produced M.W.1 Sri. M.K. Gupta who has been the inquiry officer. His statement is reliable.

41. M.W.2 is Sri S. S. Gupta and M.W.3 is Sri Khayali Ram Verma and M.W.4 is Ramesh Vardhan. These are the witnesses of fact. They have deposed the whole story which was alleged by the opposite party in the charge sheet as well as in the written statement. M.W. Sri Gupta was the manager in the bank. There is no animosity with this officer against the claimant and no such suggestion has been given. He has deposed on oath that when fraudulent remittance of Rs. three lac took place on the 11-12-90, the claimant Sri Kunwar Pal Singh was present in the bank along with those persons. It is a fact that claimant was working at Jaithara Branch and he was helping them. He has deposed that his statement was also recorded before the inquiry officer. He also deposed that when the matter came to light an FIR was lodged in the police and the police has recovered in the presence of Sri Kunwar Pal Singh and other bank officers an amount of Rs.2,21,800. This fact has been not disputed that there was a recovery of the same amount, because the same amount has been returned by court to the bank while deciding the criminal case, though there is an acquittal of the claimant in the criminal case.

42. There is a contention of the claimant that when Sri Gupta has deposed before the inquiry officer then he has not narrated such sequence. The reply has been given by M.W. 2 that the meaning of both the statement is same.

43. This witness has clearly stated regarding exhibit MEX-3 which is a cash recovery note prepared by the police wherein the aforesaid amount has been stated to be recovered from the house of the claimant in the night of 12/13-12-90, he has also signed this recovery note along with other witness Sri A. D. Singhal.

44. There is also clear version before the inquiry officer in the statement of Sri Gupta. He stated specifically that at that time Mr. K.P. Singh was also present in our branch and I saw him standing on the counter. He also came to him; therefore, the contention raised by the claimant does not have any force.

45. As has been held by Hon'ble High Court and Apex Court in their respective decisions as referred above also that in departmental proceedings as well as the

evidence which has to be appreciated before the tribunal regarding the charges, which has to be established by the opposite party is merely on the basis of preponderance of evidence and probabilities and no strict proof is required as that of in a criminal case. In this respect I have also examined the statement of claimant w.w. I. He has no where stated as to why the witnesses are deposing against him. He has no where shown that he being an employee of SC & ST the officers are having ill designs against him. No such suggestions have been given to any of the witnesses.

46. Documentary evidence as well as statement of witnesses adduced by the opposite party is reliable and trustworthy. There is no reason to discard the same though it has also been observed that this court cannot act as court of appeal, but where the evidence has been adduced by the opposite party to establish the charges against the delinquent employee then this court can look into all aspect of the case.

47. Therefore, having concluded that the inquiry conducted was fair and proper, charges have fully been established by the management before this tribunal against the charge sheeted employee and that also the claimant has miserably failed to prove his case, it is held that the action of the Deputy General Manager, Canara Bank, Lucknow in giving compulsory retirement to Sri Kunwar Pal Singh son of Sri Kanhaiya Lal vide order dated 3-6-2003 is legal and justified.

48. Reference is therefore, answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2346.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ओरियेंटल इश्योरेंस कंपनी लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रय न्यायालय-2, चण्डीगढ़ के पंचाट (संदर्भ संख्या 170/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-6-2012 को प्राप्त हुआ था।

[सं. एल-17012/10/1995-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2346.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 170/2005) of the Central Government Industrial Tribunal/Labour Court-II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Insurance Company Ltd. and their workman, which was received by the Central Government on 1-6-2012.

[No. L-17012/10/1995-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer

Case No. I.D. 170/2005

Registered on 1.8.2005

Shri Ishwar Chand,
S/o Sh. Newasi Ram,
House No.320,
Ward No.13, Ashok Vihar,
Jagadhari, Yamunanagar,
Haryana.

...Petitioner

Versus

The Manager,
Oriental Insurance Company Limited,
Court Road, Jagadhari, Yamunanagar,
Haryana.

...Respondent

APPEARANCES

For the workman : Sh. R.K. Sharma
For the Management : Sh. Ramesh Chopra

AWARD

Passed on 21st May, 2012

Central Government vide Notification No. L-17012/10/95-IR(B-II) Dated 19-4-2002, on consideration of the matter in the light of the directions given by the Hon'ble High Court of Punjab and Haryana at Chandigarh in judgment dated 5-3-2002 in Writ Petition No.3835 of 2002 filed by the workman Ishwar Chand, in exercise of the powers conferred by clause (d) of sub-Section 1 of Section 10 of the Industrial Disputes Act (hereinafter referred as Act) has referred the following dispute for adjudication to this Tribunal.

"Whether the claim of the disputant Sh. Ishwar Chand that he had been engaged as Water Boy continuously by the management of Oriental Insurance Company Limited, Jagadhari during the period from 17-5-1991 to 18-9-1992 is factually correct? If so, whether the action of the management to terminate/discontinue him from service w.e.f. 18-9-1992 is justified and legal? If not justified, what reliefs the disputant concerned entitled to?"

The workman has raised the industrial dispute by stating that he had been employed by the management on a permanent job as a water boy on 13-5-1991 and he continuously worked with the management till 18-9-1992

for more than 240 days. Management committed unfair labour practice by paying less than the minimum wages prescribed under the law and by paying under different names and by getting the signature of the workman of the name of fictitious persons. On the complaint of workman the management was challaned under Minimum Wages Act and Punjab Shops Establishment Act for paying less wages and illegally terminating the services of the workman. The management has terminated the services of the workman without complying the provisions of Section 25F of the Act. The management did not prepare the seniority list and juniors to workman are still working with the management. Even new hands were employed ignoring the claim of the workman. Workman has prayed for his reinstatement with continuity of service and back wages.

Management has contested the claim. According to it there is no sanctioned post of water boy in the company and the workman has not worked for 240 days during the 12 calendar months preceding the date of his termination. He used to do casual work intermittently for watering and dusting the office etc. during the period from 17-5-1991 to 31-7-1992. He did not work after 31-7-1992 and between 17-5-1991 to 31-7-1992 he worked only for 67 days. It was denied that the workman collected the wages under the different names. Challans under Minimum Wages Act and Shop and Commercial Establishment Act were admitted. According to the management there was no need to comply the provisions of Section 25F of the Act and to prepare the seniority list as the workman was employed on casual basis on daily wages and has not completed 240 days service. He has received his wages and nothing is due to him. The workman has brought the petition to secure the job with the company for which neither he is eligible nor entitled.

The workman filed replication to reiterate his claim.

From the pleadings of the parties the following issues arise for consideration :

1. Whether the workman was in the continuous employment of the management from 17-5-1991 to 18-9-1992 and completed 240 days service in 12 calendar months preceding to the date of his termination and whether the management violated the provisions of Section 25F of the Act while terminating the services of the workman?

2. Whether management was bound to maintain seniority list and whether juniors were retained while terminating the service of the workman?

3. To what relief, if any, the workman is entitled?

In support of its case the workman examined himself, Amrit Pal Singh and Rajiv Mehta as WW1, WW2 and WW3 respectively. Besides it, Jaipal Singh a Clerk in the office of the management and Ramji Lal, Labour Inspector

produced the record at the instance of workman and also gave their statement.

On behalf of management statement of Raju Gupta, Administrative Officer of the management Company and R.S. Kalra, Divisional Manager were examined.

I have heard the learned counsel for the parties and perused the evidence on record. I have also gone through the written arguments filed by the counsel of the workman. My findings on various issues are as follows :—

FINDINGS

Issue No.1

The case of the workman is that he was employed with the management as a Water Boy and worked for more than 240 days between 17-5-1991 to 18-9-1992. He has also alleged that during the period he was paid wages under the fictitious names also. In support of his case he has filed vouchers referred as Exhibit W2 to Exhibit W54 in his statement and has admitted that only 20 vouchers bear signatures of his name and remaining 33 vouchers had been signed by him under different names. It was argued on behalf of workman that management committed unfair labour practice as the workman was forced to sign vouchers under different names fraudulently.

It appears that little does the workman know that receiving wages under fictitious names, be it in connivance with bank employees, falls within the definition of 'cheating by personation'—an offence under Section 416 IPC; and a person cannot be allowed to reap fruits of his unlawful act. This plea that he signed 33 vouchers under different names cannot be legally accepted.

The counsel for workman has also relied on criminal proceedings against the Branch Manager of the company and it was argued that these proceedings were for illegal termination of the workman. The workman has filed judgments, in two criminal cases, marked as WA and WB. None of the judgment is relevant for the present dispute. In one case Criminal Complaint No. 169/2 of 1996 the allegation against the Branch Manager was that he did not give one month's notice or pay in lieu thereof to the workman before removing him from service and committed an offence punishable under Section 26 read with Section 22 of the Punjab Shop and Commercial Establishment Act, 1958. In the second case Criminal Complaint No. 170/2 of 1996 the allegation against the Branch Manager was that he did not produce on demand the muster roll in respect of workers, pay slips were not issued to the workers and the notice of minimum rates of wages was not displayed in the premises and thereby committed an offences punishable under Section 22(A) of the Minimum Wages Act, 1948. These two judgments are of no help to the workman in this case.

At the instance of workman, witness Ram Ji Lal, Labour Inspector has produced the copy of the

statements, marked as R-1 of certain persons recorded by the Inspector during the inquiry. But these statements cannot be considered as they may be relevant under Section 33 of the Indian Evidence Act only when it is established that the witness is dead and or cannot found; or is incapable of giving evidence or is kept out of the way by the adverse party or his presence cannot be obtained without an amount of delay or expenses which under the circumstances of the case, the Court considers unreasonable. So far as the evidence of other witness of the workman is concerned, Amrit Pal Singh who was a typist in the office of the company has admitted that the workman had worked intermittently and there was no post of Water Man in the office. He expressed his inability in telling the days the workman worked with the department.

Another witness of the workman Rajiv Mehta was also unable to tell the number of days the workman worked in the office or whether he worked from 13-5-1991 to 18-9-1992.

Both the witnesses however stated that they did not see any person other than the workman working as a Water Man in the office during the period from 13-5-1991 to 18-9-1992.

On the other hand management witness Raju Gupta stated that workman was doing casual work intermittently during the period 17-5-1991 to 18-7-1992 and had worked for 67 days only. Another witness of the management R.S. Kalra also supported him. It is clear from the evidence of the witnesses of the workman that he had not been engaged as Water Boy continuously during the period from 17-5-1991 to 18-9-1992. The workman has further failed to prove that he completed 240 days service in 12 calendar months preceding the date of his termination. Therefore the management cannot be held guilty of the violation of provisions of Section 25F of the Act in terminating the services of the workman. The case law referred by the counsel for workman in his written arguments is not applicable in the case. Issue No.1 is decided accordingly against the workman.

Issue No. 2

Under Rule 77 of the Industrial Disputes (Central Rules) 1947, it is obligatory on the employer to prepare a list of all workman in a particular category from which retrenchment is contemplated. Here in the case there was no post of Water Man. The workman had not been appointed after due process of recruitment. It is in the evidence that he was being paid out of contingency and he was a daily wager and there was no other person working as Water Man. Therefore there was no occasion for preparing the seniority list. There is no evidence that while terminating the services of the workman persons junior to him had been retained by the management. Issue No.2 is therefore decided against the workman.

Issue No. 3

From the above going discussion it is clear that the workman had not been engaged by the management during the period from 17-5-1991 to 18-9-1992 continuously and the claim of the workman against it, is not factually correct. The action of the management in terminating the services of workman is justified and legal and the workman is not entitled to any relief. Reference is answered against the workman. Let two copies of the award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 15 जून, 2012

का.आ. 2347.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पटना (बिहार) के पंचाट [संख्या 01(सी)/2009] को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-6-2012 को प्राप्त हुआ था।

[सं. एल-12011/83/2008-आई आर (बी-11)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 15th June, 2012

S.O. 2347.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award [Ref. No. 01(C)2009] of the Central Government Industrial Tribunal/Labour Court, Patna (Bihar) as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 4-6-2012.

[No. L-12011/83/2008-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

Reference No. : 01(C) of 2009

Industrial dispute between the management of Punjab National Bank, Z.O. Bihar South Zone, Chanakya Place, B-Block, Patna and their workmen represented by PNB staff Union Saboo Complex IIInd Floor, Lawlly's Complex, Exhibition Road, Patna.

For the management : Shree D.K. Sahay, Senior Manager-
HR Authorised Representative.

For the workman : Shree B. Prasad, General Secretary
of Bank Employees Federation of
Bihar.

Present : Shree Harish Chandra Singh
Presiding Officer Industrial
Tribunal, Patna.

AWARD

Patna, the 29th May, 2012

By adjudication order No.-L-12011/83/2008-IR(B-II) dated 4-2-2009 the Central Government (Government of India) Ministry of Labour, New Delhi referred under clause (d) of sub-section (1) and sub-section-2(A) of Section 10 of the Industrial Dispute Act, 1947 (hereinafter to be referred to as the Act) the following dispute between the Management of Punjab National Bank, Patna and their workmen for adjudication to the Central Government Industrial Tribunal, Patna.

“Whether the action of Management of Punjab National Bank Patna by transferring Shri K.K. Gupta, CTO (Physical handicapped) is fair legal and justified? What relief the workman is entitled to?”

Admitted facts of the case are that the workman Shree K.K. Gupta was appointed as a clerk by Punjab National Bank in the year 1985. His first posting was at LBO Aurangabad. He is physically handicapped and was appointed under physically handicapped category. On his request he was transferred to Zonal Training Centre at Patna in the year 1986. Later on again on his request he was transferred to New Market, Patna branch. This transfer from Zonal Training Centre, Patna to New Market branch Patna was made in response to his request letter dated 3-4-1992. While working at New Market Patna branch he was redesignated as CTO. Subsequently vide order dated 4-8-2007 he was transferred to RCC Patna branch. The workman raised this Industrial Dispute through union namely P.N.B. Staff union (hereinafter referred to as minority union). After failure report from Assistant Labour Commissioner (Central), Patna Government of India referred this Industrial Dispute to this tribunal for adjudication.

The case of the workman is that he was transferred to RCC branch Patna only because he resigned from the membership of P.N.B. Employees Union, Bihar (hereinafter referred to as Majority Union) and he joined minority union as a member. The case of the workman to be quoted in his own language is “had the workman remained as a member of the majority union, the management could not have dared to transfer a physically handicapped person coming under excepted category.” The workman has been subject to harassment only on the grounds of his union affiliation. Further the case of workman is that the management didn't follow and adhere to the Govt./Bank Guidelines relating to transfer of physically handicapped persons. Further case of the workman is that according to the existing Bank Guidelines for filling of the post of CTO the offer should have been given to the senior most clerks on the basis of station-wise seniority. This was not done deliberately as Senior Regional Manager was had in glove with the majority union. The workman has prayed that the order dated 2-2-2007 relating to his transfer from New Market, Patna Branch to RCC Patna branch be set aside. He has further prayed that allowance at the rate of Rs. 30

per day for attending duties at RCC Patna Branch be paid to him.

3. The case of the management as made out in the written statement is that service conditions of the workman staff are governed by the provisions of Sastri Award and Desai Award and various Bipartite Settlements. Para 535 of Sastri Award inter-alia, provides that the transfers are normal incidence of working of the bank. As transfers don't constitute conditions of service, it has been submitted by the bank that what has been referred to this tribunal does not constitute “Industrial Dispute” as defined under the provisions of Section 2(K) of the I.D. Act, 1947. Further case of the management is that the workman Shree K.K. Gupta was transferred to RCC Patna branch on account of administrative exigencies due to the expansion of work on account of time bound centralization of inward and outward clearing at RCC CTOs were urgently required at RCC. On account of administrative exigencies, 6 CTOs were deployed at RCC, Patna as the vacancies at a station having more than one office at a station can also be filled by redeployment of existing CTOs. The deployment of these CTOs was done on the basis of their longest stay in their respective branches. The transfer of Shree K. K. Gupta, who was one among those CTOs deployed at RCC Patna, was done on account of administrative exigencies of the bank. However, subsequently the management considered the case of the Sri K. K. Gupta and transferred him to Punaichak, Patna with effect from 31-1-2009. The management has denied the allegation that the workman Sri K. K. Gupta was transferred by way of harassment only because he joined minority union. The allegation of Sri Gupta that he was transfer to RCC in connivance with the majority union on account of his affiliation to minority union is wrong and baseless. Specific case of the bank is he was transferred to RCC, Patna vide letter dated 2-8-2007. He requested for monthly deduction of union subscription in favour of minority union was vide letter dated 20-8-2007. Besides Sri Gupta 5 more CTOs belonging to other unions were also transferred to RCC Patna. Therefore, the allegation of Sri Gupta that he was transferred on account of his affiliation to minority union is baseless. Further case of the management is that filling of new vacancies by giving offer to the senior most clerks requires acceptance and it takes time. Since posting of CTOs at RCC were urgently required Sri Gupta and 5 others were posted at RCC, Patna on account of administrative exigencies. No government order or bank guidelines has been violated. Transfer of Sri K.K. Gupta is legal and justified and he is not entitled to any relief.

Findings

4. The workman has assailed his transfer from new market branch Patna to RCC branch Patna mainly on the grounds that he was victimised and harassed only because he resigned from the primary membership of the majority

union and joined the membership of the minority union. When report regarding deduction of monthly subscription was placed before the Chief Manager New Market, Branch, Patna, the management transferred him to RCC branch Patna vide order dated 4-8-2007. It is alleged that Senior Regional Manager was in connivance with majority union. This is the case of the workman. It is for the workman to prove this. Unfortunately the workman has not adduced any evidence to prove this fact. Only in his oral evidence the workman examined as W.W-1 (Krishna Kumar Gupta) has stated that he applied for membership of P.N.B. staff union (minority union) vide his application Ext.-W/2. However in his cross-examination he has accepted that Ext.-M/2 is his representation dated 6-8-2007 against his transfer. On this representation he was written "Copy to General Secretary, AIBEA". However he has tried to explain that on 6-8-2007 he was not of member of AIBEA rather he was member of P.N.B. staff union. His application for membership of minority union Ext.-W/2 does not indicate that on which date he was granted membership of minority union. The application Ext.-W/2 is dated 1-8-2007 but there is no endorsement by office bearer of the minority union to indicate if he was granted membership and if so when. Another important documents in this regards is Ext.-M/3. This is a letter by General Secretary of majority union to the Senior Regional Manager protesting against the transfer of the workman Sri K. K. Gupta. Thus there is endorsement on the representation of the workman that copy of his representation was forward to majority union and majority union forwarded the same to the management and protected against his transfer. Under these circumstance the plea of the workman that the management particularly Senior Regional Manager was in connivance with majority union and he was transferred for that reason goes to winds. Particularly Ext.-M/3 cuts the very root after of the plea of the workman. Under this circumstance the case of the workman that he was transferred only because of his union affiliation can't be accepted.

Another ground on which the transfer of the workman has been challenged is that his transfer from New Market Branch, Patna to RCC Branch, Patna was in violation of guidelines of the Central Government and bank. If there was any such guidelines regarding exemption of handicapped workman from transfer, that should have been brought on record by the workman. The onus to prove to existence of any such guidelines was on workman. The workman didn't produce any such letter or circular containing guidelines. However incourse of hearing the management was asked by this tribunal to assist the tribunal by producing the circular if any regarding transfer of physically handicapped persons. On 9-9-2110 the produced copy of circular of personael division P.N.B. i.e. letter no.-14/88 dated 1-3-1988 regarding transfer of physically handicapped person. Another circular was also produced by the bank. It was regarding settlement about

posting of computer operators. The circular regarding porting and transfer physically handicapped person may be produced as her under:

"The matter of postings and transfers of physically handicapped persons has been considered by the Government and in view of the Govt. guidelines, it has been decided that subject to the administrative exigencies, the physically handicapped persons in bank in all cadres should normally be exempted from routine periodically transfer such persons should not normally be transferred even on promotion if a vacancy exists in the same branch/office/town/city. When the transfer of physically handicapped employees becomes inevitable on promotion to place other than his original place of appointment due to non-available of vacancy it should be ensured that such employees are kept close to their original place or posting and in no case are transferred to far off/remote places. This concession would not be available to such of the handicapped employees who are transferred on grounds of disciplinary action or are involved in fraudulent transactions.

The above guidelines may please be kept in view while deciding the cases of posting and transfer of physically handicapped people."

It is clear as day light that this circular only provide guidelines. Concession or exemption given to physically handicapped employees is "subject to administrative exigencies. In this circular subject to the administrative exigencies, physically handicapped employees have been normally exempted from routine periodical transfer. It further provides that even in case of promotion physically handicapped persons should not normally be transferred, if a vacancy exists in the same branch/office/town/city. In this case this it is admitted that the workman is physically handicapped and the case of the management is that the transfer of the workman was in administrative exigencies. There were vacancies of CTOs which were required to be filled up immediately to clear the back log in a time bound manner. On account of these administrative exigencies workman Sri K.K. Gupta and 5 others were transferred to RCC branch, Patna. The exemption granted in this circular is subject to the administrative exigencies. Therefore, it can't be said that there was any violation of the guidelines of the Govt. and bank. More over guidelines given in this circular are merely guidelines. Guidelines can't take place of any settlement, rule or law. This tribunal cannot inforce the guidelines as a settlement or as a rule or as a law.

The workman has further challenged its transfer on the ground that at the time of posting at RCC branch, Patna as CTO, there were vacancies of the post of CTOs at RCC Patna. In such circumstances senior most clerks

should have been offered the post of CTOs on the basis of station wise seniority. This was deliberately not done as Senior Regional Manager was in connivance with the majority union. On being asked by this tribunal the management furnished a copy of HRD division circular No. 276 dated 1-9-2005 regarding settlement on posting of computer Operator. A copy of settlement dated 1-9-2005 is enclosed with the said circular. This settlement makes provisions of posting of computer operator category-A by making offer to eligible clerical employees in order of inter-se-seniority determined in the city town as unit. This settlement does not deal with the transfer of CTOs. If offer was not made to eligible clerical employees, it is another dispute but it does not make the transfer of the workman illegal.

And lastly now the workman has been transferred from RCC branch, Patna to New Punaicheck branch Patna. In his cross-examination in para-15 he has stated that he was wrongly transferred from New Market branch, Patna to RCC Branch, Patna. He knows that wrong/mistake has now been corrected by transferring him to Puncicheck branch, Patna. Presently he is working as CTOs-B but he was transferred earlier from New Market branch to RCC branch as CTOs-A but in the same breath he has admitted that while working at RCC branch, he was getting allowance admissible to CTOs-B. Thus according to workmen himself error/wrong/mistake made by transferring him from New Market Patna Branch to RCC Patna has now been corrected. Thus there remains no dispute. Admittedly he was not put to any financial loss. At RCC Patna he was paid allowance admissible to CTO-B.

It was argued on behalf of the management of the Bank by way of preliminary objection that service conditions of workmen staff are governed by the provisions of Sastri Award and Desai Award and various Bipartite settlements. Paragraph-535 of Sastri Award, inter alia, provides that transfer are normal incidence of working of Bank. Transfer do not constitute conditions of service. As such, it was argued, transfers can't constitute "Industrial Dispute". I find substance in this argument. It is now well settled that transfer are necessary incidence of service. Courts and Tribunals generally do not interfere with transfers unless there is allegation of malafide and the same is proved. In this case there is no allegation of malafide. Only a case of harassment on account of union affiliations has been pleaded and that too has not been proved.

In view of the above discussions and findings I have come to the conclusion that there was nothing wrong in the transfer to Sri K. K. Gupta from New Market Branch, Patna to RCC Branch Patna. Transfer was fair legal and justified. He is not entitled to any relief.

This is my award accordingly.

HARISH CHANDRA SINGH, Presiding Officer

नई दिल्ली, 19 जून, 2012

का.आ. 2348.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/भ्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 29/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-6-2012 को प्राप्त हुआ था।

[सं. एल. 12012/77/2003 आई आर (बी 1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 19th June, 2012

S.O. 2348.—In pursuance of Section 17 of the Industrial Disputes Act, (14 of 1947) 1947, the Central Government hereby publishes the Award (Ref. No. 29/2003) of the Central Government Industrial Tribunal/Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Bikaner and Jaipur and their workman, received by the Central Government on 19-6-2012.

[No. L-12012/77/2003-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, IJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR.

Industrial Dispute no.29 of 2003

Between—

Sri Rajendra Kumar
Son of Sri Munni Lal,
House No. 69 Ghan Khara
Air Force Chakeri, Kanpur.

And

The Branch Manager,
State Bank of Bikaner & Jaipur,
Naubasta, Kanpur

2. Central Government. Ministry of Labour New Delhi has referred the following reference for adjudication to this tribunal vide reference order no.1.-12012/77/2003-IR-B-1 dated 14-8-2003.

3. Whether the action of the State Bank of Bikaner & Jaipur in terminating the services of workman Sri Munni Lal with effect from 16-4-02 is just and bonafide? If not to what relief the workman is entitled to?

4. In the instant case after exchange of pleadings between the parties the case was fixed for evidence of the claimant. Although the opposite party put in its appearance before the Tribunal but the claimant neither appeared in

the proceedings of the case nor adduced any evidence in support of his claim.

5. It is settled legal position of law that if the claimant is not interested in prosecuting his case by way of adducing his evidence, he cannot be granted any relief in pursuant of his claim.

6. Since the claimant has palpably failed to adduce his evidence documentary or oral, the tribunal has got no option but to decide that the claimant is not interested to prosecute his claim and the reference is bound to be decided against the claimant holding that he is not entitled for any relief pursuant to the present reference.

7. Reference is answered accordingly against the claimant and in favour of the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 20 जून, 2012

का.आ. 2349.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 170/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-2012 को प्राप्त हुआ था।

[सं. एल-12012/88/92 आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th June, 2012

S.O. 2349.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 170/92) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of Hyderabad and their workman, received by the Central Government on 20-6-2012.

[No. L-12012/88/92-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/170/92

Presiding Officer: Shri Mohd. Shakir Hasan

Shri Badrivishal Satyanarayan Sharma,

Housing Society,

Ambajegai,

Distt, Beed

...Workman

Versus

The Regional Manager,

State Bank of Hyderabad,

Kailas Motors, Jaina Road,

Aurangabad

The General Manager,

State Bank of Hyderabad,

Head Office, Gun Foundry,

Hyderabad

... Management

AWARD

Passed on this 15th day of May 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12012/88/92-IR-B.III dated 31-7-92 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of State Bank of Hyderabad in terminating the services of Shri Badrivishal Satyanarayan Sharma was justified? If not, to what relief the workman is entitled to?”

2. According to the workman, his case in short, is that the workman was employed as peon by the then Branch manager of the State Bank of Hyderabad Ambajogai Branch orally w.e.f. 5-4-88 to 27-9-89 for 243 and 242 days respectively in 1988 and 1989. He had also worked in the said branch in the year 1990 when required. He was paid wages of Rs. 10 per day in violation of the Minimum Wages Act. A circular dated 20-5-1990 was issued whereby all the Branch Managers were directed to forward the applications of the employees engaged on daily wages or on contract basis for considering them for permanent services in the bank. He submitted his application but the Branch Manager avoided to forward his application. He raised dispute before the Labour Enforcement Officer. Lastly the workman was called for interview on 5-3-1992. He appeared in the interview but the management contrary to the fact submitted before Labour Enforcement Officer, Bhusawal that he failed to attend the interview. As such he was not considered for absorption in the Bank. It is submitted that the reference be accordingly answered.

3. The management appeared and filed Written Statement in the case. The case of the management, inter alia, is that the workman was engaged as a casual labour on daily basis for 436 days and not as 243 and 242 days for the year 1988 and 1989 respectively. He was engaged only a stop gap arrangement to carry out specific menial nature of work. He was paid Rs. 10 per day as daily wages. He was never employed in the year 1990. It is admitted that a circular was issued to all branches to forward the applications of the employees who were working in permanent vacancies on daily wages. He was also called for interview alongwith other candidates and he attended on 5-3-1992. He was not

found suitable for absorption in the Bank and was not selected for appointment. It is submitted that the claim of the workman be dismissed.

4. On the basis of the dispute raised, the following issues are framed—

I. Whether the action of the management Bank in terminating the services of the workman is justified?

II. To what relief the workman is entitled?

5. Issue No. I

Before discussing the issue, it is not out of place to say that the workman has pleaded and only raised dispute in his statement of claim that he was entitled to be absorbed in view of the circular No. CTR-LA No. 27/89-90 dated 20-5-90 issued by the management Bank but he was not absorbed in spite of intervention of Labour Enforcement Officer (C), Bhusawal though he was also interviewed but his candidature was rejected on the ground of unsuitability. The reference is as to whether the termination of the workman from services was justified and proper. It is a settled principle that the Tribunal cannot go beyond the reference. There is no reference as to whether the workman was entitled to be absorbed in view of the circular in the services of the Bank and his rejection to absorb in the Bank is justified.

6. According to the workman, he was engaged as peon in the management Bank at Ambajogai branch w.e.f. 5-4-88 to 27-9-89 for 243 and 242 days in the year 1988 and 1989 respectively. He was also engaged in the year 1990 when required by the management. He cannot say the basis on which he was engaged. His pleading does not show that he shall be deemed to in continuous service for a period of one year during a period of twelve calendar months preceding the date with reference to which calculation is to be made i.e. preceding the date with termination from the year 1990 as he was engaged when required. Thus under Section 25 B of the Industrial Dispute Act, 1947 (in short the Act, 1947) his service shall not be deemed to in continuous service. This shows that the provision of Section 25 F of the Act, 1947 is not attracted. Moreover there is no pleading of the workman that he was terminated without complying the provision of Section 25-F of the Act.

7. The workman Shri Badrivishal has examined in the case. He has stated in his evidence at para-1 that he was also engaged by the Bank in the year 1990. His evidence does not show that he worked 240 days for a period of one year during a period of twelve calendar months preceding the date with reference to which calculated is to be made under the provision of Section 25 B of the Act, 1947. He has not stated even a word in his evidence that he was terminated without complying the provision of Section 25 F of the Act rather there is no case of the workman that his termination was illegal and unjustified.

8. The workman has also adduced documentary evidence which are proved by the management witness. Exhibit W/1 is the certificate of temporary service of the workman. This statement shows that in the year 1988 the workman had worked 219 days whereas in the year 1989 he worked 217 days. This document does not show that the workman had also worked in the year 1990. This document fails to prove that during the period of twelve calendar months in the year 1990, the workman had worked 240 days as required under Section 25-F of the Act, 1947 for calculating the continuous service of one year.

9. Exhibit W/2 is the interview letter dated 3-2-1992 whereby the workman was called for interview on 5-3-1992 for considering absorption in Bank's service. Exhibit 3 series are letters of the Land Enforcement Officer (C), Bhusawal to resolve the dispute for considering the candidature of the workman to absorb in the Bank's service. Exhibit W/4 is the notice published in the Newspaper inviting application for absorption from eligible candidates. Exhibit W/5 is the application of the workman for absorption in the service of the bank. The said application of the workman was filled up by the workman himself. He has shown himself the particulars and period of engagement in the bank. He had shown that in the year 1988 he worked 243 days and in the year 1989 242 days. He had not indicated any day of work of the year 1990. This document is in contradiction with Exhibit W/1. Thus it is clear that the workman had failed to establish that he worked 240 days in the year 1990, as required for continuous service of one year preceding the date with reference. It is stated that the said application was forwarded by the branch of the bank for considering his candidature. Thus it is clear that the documentary evidence also does not prove that he worked 240 days in the year 1990 as has been pleaded by the workman. Moreover there is no pleading nor any evidence oral or documentary that he was terminated without complying the provision of the 25-F of the Act, 1947.

10. On the other hand, the management has examined one witness. The management witness Shri Sunil L. Nikam is Branch Manager of Ambajogai Branch. He has stated that he was posted at the relevant time when the workman was engaged on casual basis. He has stated that he denied that he worked in the year 1990. His evidence also does not prove the case of the workman that he worked 240 days in the year 1990. Thus it is clear that there is no case of the violation of the provision of the Act, 1947. Moreover there is no reference to determine as to whether the workman was entitled to be absorbed in the Bank's service. Thus this issue is decided against the workman and in favour of the management.

11. Issue No. II

On the basis of the discussion made above, I find that the action of the management in terminating the services of the workman is justified and legal. The workman is not entitled to any relief. Accordingly the reference is answered.

12. In the result, the award is passed without any order to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 20 जून, 2012

का.आ. 2350.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 74/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-2012 को प्राप्त हुआ था।

[सं. एल-12012/110/2008-आईआर (बी 1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th June, 2012

S.O. 2350.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workman, which was received by the Central Government on 20-6-2012.

[No. L-12012/110/2008-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

Industrial Dispute case No. 74/2008

Date of Passing Award - 5th June, 2012

Between :

The Assistant General Manager,
State Bank of India, Bhubaneswar
Main Branch, Bhubaneswar,
Dist, Khurda (Orissa). . . 1st Party-Management

(And)

Their workman Sri Laxman Kumar Routray,
Qr. No. VR-5/1, Kharvefa Nagar, Unit-3,
Bhubaneswar. (Orissa) . . . 2nd Party-Workman

Appearances:

Shri Alok Das,
Authorized Representative

For the 1st Party-
Management

None

For the 2nd Party-
Workman

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide their Letter No. L-12012/110/2008-IR (B-1), dated 10-10-2008 to this Tribunal for adjudication to the following effect:

Whether the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Laxman Kumar Routray w.e.f 30-09-2004 without complying the provisions of the I.D. Act, 1947, is legal and justified? To what relief is the workman concerned entitled?

2. The 2nd Party- Workman has filed his statement of claim alleging that he had joined his services as a Messenger on 13-5-1985 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 05-11-2007. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the

Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 16 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank on 13-5-1985 and he was discontinued from service on 30-9-2004 is not correct. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has never completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons were called for interview. The 2nd Party-workman was also called for an interview along with other eligible persons in the year 1993. As he was not found successful in the said interview he could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997 filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Routray had allegedly been terminated in December, 1990 his claim has become stale by raising the dispute after lapse of a period of 17 years. It is a settled principle of law that delay destroys the right to remedy. Thus

raising the present dispute after 17 years of alleged termination is liable to be rejected.

4. On the pleadings of the parties following issues were framed :—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I.D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman proves that he worked for more than 240 days as enumerated Under section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Shri Laxman Kumar Routray with effect from 30-9-2004 without complying the provisions of the I.D. Act, 1947 is legal and justified?
4. To what relief is the workman concerned entitled?
5. The 2nd Party-workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.
6. The 1st Party-Management has adduced the oral evidence of Shri Umakanta Tripathy as M.W.-1 and filed documents marked as Ext.-A to Ext.-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in I.D. Case No. 712007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 16 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more

specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO. 2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he was appointed on 13-5-1985 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-1 Shri Umakanta Tripathy in his statement before the Court has stated that "the disputant was working intermittently for few days in our branch on daily wage basis in exigencies..... He had not completed 240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued with effect from 30-9-2004, but stated that "In-fact the workman left working in the Branch since December, 1990". The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to

prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE No. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Sri Laxman Kumar Routray with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE No. 4

11. In view of the findings recorded above under Issues No.2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 जून, 2012

का.आ. 2351.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 163/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.6.2012 को प्राप्त हुआ था।

[सं. एल-12012/588/1998 आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th June, 2012

S.O. 2351.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 163/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure. in the Industrial

Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 20-6-2012

[No. L-12012/588/1998-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/163/99

PRESIDING OFFICER : SHRI MOHD. SHAKIR HASAN

Shri Yasin Khan,
S/o Shri Hasin Khan,
Ex-worker of SBI, Madhuban,
Raigarh (MP)

... Workman

Versus

The Regional Manager,
State Bank of India,
Region- V, Shankarnagar,
Raipur (MP)

... Management

AWARD

Passed on this 2nd day of May 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-12012/588/98-IR(B-I) dated 19-4-99 has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the State Bank of India, Raigarh Branch, under the Regional Manager, Region-V, Raipur (MP)) in terminating the services of Shri Yasin Khan, S/o Hasin Khan, Ex-Casual Worker with effect from 6-3-97 is justified? If not, to what relief the workman is entitled?”

2. The case of the workman, in short, is that he was engaged as a waterman on daily wages from February 1991 to August 1994 continuously in the main Branch, Raigarh of the State Bank of India. He worked more than 240 day in a calendar year. He was discontinued from service which was amount to retrenchment. It is stated that there was violation of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is stated that Shri Mehattar Chouhan, Shri Benudhar Gupta and Shri Paras Namdeo had worked less days as daily wagers but they had been regularized in the service and the workman was arbitrarily retrenched. It is submitted that the workman be reinstated with backwages.

3. The management appeared and contested the reference. The case of the management, inter alia, is that

the workman was employed as part time daily rated employee as waterman at the Raigarh Branch of the Bank. He had worked from 8-2-91 to 31-8-91 for 172 days, from 1-9-91 to 11-1-92 for 111 days, from 22-10-92 to 30-6-93 for 219 days and 1-5-94 to August 94 for 98 days. He was engaged on contract basis on exigency of work which was commenced on the opening of the bank and ended with the closing hours of the Bank. He had not worked 240 days in a calendar year as required under Section 25-B of the Act, 1947. As such he was not entitled to any retrenchment compensation under the provision of section 25-F of the Act, 1947. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication—

I. Whether the action of the management in terminating the services of the workman w.e.f. 6-3-97 is justified?

II. To what relief the workman is entitled?

5. Issue No. I

The workman after appearing in the reference case filed statement of claim but did not file evidence by way of affidavit. Lastly he became absent. Thereafter the case proceeded ex parte against the workman on 17-1-2011.

6. On the other hand, the management has adduced oral evidence in the case. The management has admitted the photocopy of the certificate filed by the workman which is marked as Exhibit W/1. The said certificate shows that the Chief Manager of the Bank had granted a certificate regarding the period of work done by the workman. The certificate shows that the workman had worked 59 days from October 1992 to Dec. 1992, 160 days from January 1993 to June 1993 and 98 days from May 1994 to August 1994. Thus it is clear that the workman had not worked 240 days for a period of one year during a period of twelve calendar months preceding the date with termination as required under Section 25 B of the Act. Since he was not in continuous service for a period of one year, he shall not be said to be a retrenched employee and the provision of Section 25-F of the Act is not attracted. The document of the workman itself establishes that there is no violation of the provision of the Act, 1947 in terminating the services of the workman.

7. The management has examined Shri Laxman Das Agrawal who is Branch Manager of Raigarh Branch of the Bank. He has supported the case of the management in his evidence. He has stated that Shri Khan was engaged as a daily rated employee. He has stated the period of his work as has been given in the pleadings of the management. His evidence also shows that the workman had not worked 240 days for a period of one

year during the period of twelve calendar months preceding the date of termination. Since his service is not counted one year in continuous as required in Section 25-B of the Act, it is evident that there is no violation of the provision of Section 25-F of the Act. There is no evidence that junior to him were taken into services. Thus this issue is decided against the workman and in favour of the management.

8. Issue No. II

On the basis of the discussion made above, it is clear that the workman is not entitled to any relief. Accordingly the reference is answered.

9. In the result the award is passed without order to costs.

10. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 20 जून, 2012

का.आ. 2352.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दि धनलक्ष्मी बैंक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अरणाकुलम के पंचाट (संदर्भ संख्या 29/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-2012 को प्राप्त हुआ था।

[सं. एल-12012/46/2010-आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th June, 2012

S.O. 2352.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the Industrial Dispute between the management of The Dhanalakshmi Bank Ltd., and their workman, which was received by the Central Government on 20-6-2012.

[No. L-12012/46/2010-IR(B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri. D.Sreevallabhan, B.Sc., L.L.B., Presiding Officer

(Tuesday the 29th day of May, 2012/
8th Jyastham, 1934)

I.D.29/2010

Workman : Smt.S.Hemalatha,
'CHIRAG', T.C.20/1186(1),
Karamana,
Trivandrum - 695 002

By Adv.Shri.R.Lekshmana Iyer.

Management: The Managing Director,
The Dhanalakshmi Bank Ltd.,
Head Office, Naickanal,
Thrissur - 680 002.

By M/s. B.S.Krishnan Associates.

This case coming up in Adalat on 25.05.2012, this Tribunal-cum-Labour Court on 29.05.2012 passed the following:

AWARD

This is a reference made under Section 10 (I)(d) of Industrial Disputes Act, 1947.

2. The reference is:

"Whether the action of Management of Dhanalaxmi Bank Ltd., Thrissur in dismissing Smt.Hemalatha from service is legal and justified? What relief the workman is entitled to?"

3. After submission of the pleadings of both parties the case was taken up in the Lok Adalat as per the request made by the learned counsel for both sides. A full and final settlement was arrived at in the Lok Adalat. Hence an award can be passed in terms of the settlement.

In the result an award is passed in terms of the settlement which forms part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 29th day of May, 2012.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID 29/2010

S. Hemalatha : Workman
Dhanalaxmi Bank Ltd. : Management

The above Industrial dispute has been raised by Smt. S. Hemalatha disputing the punishment of dismissal imposed on her w.e.f. 30.09.2009. The matter was taken up in Lok Adalat and after a series of negotiations the parties have decided to settle the dispute on the following terms:

1. The punishment of dismissal imposed upon Smt. S. Hemalatha will be modified as "removal from service with superannuation benefits".

2. The management agrees to pay the following amounts in favour of Smt. S. Hemalatha towards her superannuation benefits.

(a) Provident Fund	Rs. 16,71,258 (As on 31/03-2012)
(b) Gratuity	Rs. 3,50,000
(c) Leave Encashment	Rs. 1,74,272
(d) Arrears of salary	Rs. 37,782.13 including CPF of Rs. 2829
(e) Arrears of Subistence Allowance	Rs. 32,145/-
Total	Rs. 22,65,457.13

3. The management agrees to pay the above said amount within 45 days from today. In case of failure, the management bank is liable to pay the said amount together with interest @ 6% per annum from that date onwards until payment.

Apart from the receipt of the above mentioned benefits, Smt. S. Hemalatha will not have any right or claim for employment in future or any other monetary claims against the management.

Agreeing to the above terms both parties have agreed this Memorandum of settlement.

Dated this the 25th day of May, 2012.

Workman : Management :
Counsel of Workman. Counsel for Management.

नई दिल्ली, 20 जून, 2012

का.आ. 2353.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ संख्या 138/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-2012 को प्राप्त हुआ था।

[सं. एल-22012/170/1999-आईआर (सीएम-II)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 20th June, 2012

S.O. 2353.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 138/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the employers in relation to the employers in relation to the

management of BCCL and their workman, which was received by the Central Government on 20-6-2012.

[No. L-22012/170/1999-IR (CM-II)]

RAMESH SINGH, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL**

PRESENT : Sri Kishori Ram,
Presiding Officer,
REFERENCE NO. 138 OF 1999

PARTIES : The management of Chanchi Victoria
Area of M/s BCCL, Burdwan

Vs.

Sri Sukdeo Nunia

REPRESENTATIVES:

For the Management Mr. P.K. Das, Ld. Advocate

For the Union (Workman) Mr. Gorachand Chatterjee

Industry : Coal State : West Bengal

Dated 11th May, 2012

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Government of India, Ministry of Labour vide its letter No. L-22012/170/99-IR(CM-II), dated 31-8-1999 has been pleased to refer the following dispute for adjudication by this Tribunal:

SCHEDULE

Whether the action of the management of Chanchi Victoria Area of M/s. BCCL in not protecting the wages of Sri Sukdeo Nunia, Auto Fiter is justified? If not, to what relief the concerned workman is entitled?

2. Having received the order of the Letter No. L-22012/170/99-IR (CM-II) dt. 31.08.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 138 of 1999 was registered on 14.09.1999 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with relevant documents and a list of witnesses in support of their claims. In pursuance of the said orders notices by the registered post were sent to the parties concerned.

3. The case of the sponsoring union for the workman Sukhdeo Nunia is that he was appointed as

U.G. Loader on 11-12-1985 and posted at Laikdih deep colliery to work. Since the management of C.V. Area was in need of trained Auto Fitter in their area Auto Work Shop, Laikdih, he was transferred to the Auto Work Shop to work as Auto Fitter since 17th September, 1986 as he was found fit for the post due to having experience in the job. He kept on working as Auto Fitter against a permanent vacancy, getting the wages of U.G. loader. At last he was regularized as Auto Fitter as the L/No. 7777 dt. 2/21-12-1995 with the initial Basic Pay of Cat. I which was not accepted by him. Later on after long delay & discussion, he was regularized as Auto Fitter Cat. IV with immediate effect as per L/No. 2443 dt. 25/26-10-96, but initial basic pay of Cat. IV (Rs. 70.30) which caused him to suffer monetary loss of Rs. 15.08 per day in the Basic Pay as contrasted with his previous one prior to his regularization in Cat. IV. Thereby the workman was not given Pay protection as considered by the management in the cases of other workman and his contemporaries. So he is entitled to Full Pay Protection of his wages for the period of 31-12-1995 till his regularization in Cat. IV and his all arrears etc. thereof, as well as his normal promotion like all other fitters thereafter as per the Company's norms.

4. Whereas the case of the management with specific denials is that workman Sukhdeo Nunia on his transfer to Transport Department of Chanch Victoria Area accepted his engagement to work in the said department for repair and maintenance of the Company's various Automobiles as Trainee. As he was piece-rated worker, he was converted to time rated designation on completion of required number of days in time rate in the year 1955 having the approval of the Competent Authority of Head Quarters, conveyed to him by the Dy. C.P.M., C.V. Area letter No. 7777, dt. 2/4-12-1995, his basic was fixed in the initial Cat. I as per the exiting Circular of 1995 which was also accepted by him. He was required as Auto Fitter in Cat. IV in the year 1996, and was paid his wages of Cat. IV as fixed as per norms of Pay Protection.

Further the case of the Management is that as per the new circular of the company issued by the GM (MIS), letters dt. 12/13-03-99, the piece-rated U/G Loaders, who have been converted into time rate in the year 1995-96 will be paid basic as per new system of fixation, i.e., SPRA earned at the time of regularization will be added to the initial basic of the approved category and accordingly fitment will be allowed in the approved time-rate Category w.e.f. the date of his regularization/conversion. No financial benefits or arrear on this account will accrue or payable. Admittedly, a proposal was already sent to the BCCL H.Qr. for fixation of basic i.e., converted category of Sri Sukhdeo Nunia, Piece rated underground loader to Time rated Auto Fitter as per conversion Order No. 7777, dt. 2/4-12-1995 and refixation of basic in Cat. IV accordingly.

It is alleged that the case is already under consideration, so no valid Industrial Dispute exists. The Pay Protection of the workman can be given only within the purview of the circular as a policy decision. Promotion etc. are given to a worker concerned as per provision of the cadre scheme after completing the criteria subject to vacancy. The workman is being given required relief as per the norms of the Company's so he is not entitled to any relieves except those relieves which are legal, bonafide and justified under the aforesaid circular of the Company.

FINDING WITH THE REASONING

5. In this case, WW I Sukhdeo Nunia (Nonia), the workman for the Union concerned has been examined. But the Management declined to examine any witness on its behalf.

On the perusal and consideration of all the materials, oral & documentary, as adduced by the workman, I find the following facts indisputable :

(i) The workman joined as U/G Loader at Laikdih Colliery on 11-12-1985, prior to which he had learnt Auto Mobile Works outside. As per Note Sheet dt. 21-9-96 of the Management (Ext. W1 on admission), Sukhdeo Nonia came from Laikdih deep colliery on 17-9-1986, and from that date he was working Auto Fitter. On his applications identical dt. 20-7-89 and 30-8-95 (Ext. W. 2 series) and the Manager (Transport) report (Ext. W. 3) about his working as the Auto Fitter for the year 17-8-1986 to 15-3-1990, he got the designation of Auto Fitter, and accordingly he was authorized as an Auto Fitter as per the office order dt. 10-1-1993 (Ext. W 2/3) and his conversion in Time Rated Category as per office order dt. 20-12-1995 (Ext. W 2/9). At last, he was regularized as Auto Fitter (T), Cat. I as per the office order dt. 25/26-10-1996 (Ext. W 2/7), according to which his basic pay as Auto Fitter Cat. IV was fixed at Rs. 70.3 as per the office order dt. 27-1/2-3-97 (Ext. W 2/8).

(ii) Admittedly, the workman had not filed any application for his conversion of piece rated into time rated before the management, rather it was effected as per the office order of the management in 1996-97 (Vide office Order dt. 20-12-95 Ext. 2/9).

Whereas the management used to pay the workman piece rated wages for 10-12 years and on his regularization as Time rated worker in Cat. I, it resulted in reduction of his piece rated wages affecting his basic wages as contrasted with those of his colleagues Sukar Gope and Lal Bhadur as well as his Juniors Devendra Pandey, Sham Bihari Singh and R.D. Tiwary who are drawing their wages daily at the rate of Rs. 20-30 more than him, though his service has been 25-26 years till now. So the workman stated the action of the management in deduction of his wages as unjustified. he is entitled to pay protection of the wages due.

6. Mr. P. K. Das, Ld. Advocate for the Management in reference to the Ruling [(2011 (128) FLR 458] (The HC) S. B., workman Raj Rappa Washery of M/s. CCL Vs. Employees Raj Rappa Washery of CCL has submitted, as held therein, that in case of the demand of the union for regularization of some workers who continuously worked from 1991 to March 1999, but they failed to establish the same; so the Award of the Tribunal that the workmen were not entitled to get any relief had no ground to interfere with it. (Para 5) Further plea of Mr. Das, Ld. Counsel for the Management in view of the authority : [2011(128) FLR 928] (SC)(DB) Rajasthan & Others Vs. Daya Lal & Others as held therein, is that Mere continuation of service by a temporary or adhoc or daily wages employee under cover of some interim order of the Court would not confer on him any right to be absorbed into service, as the employee was not working against a sanctioned post, so he is not entitled to claim regularization (para 8). Since in the instant case the Workman Auto Fitter (T), Cat.I, has been regularized as Auto Fitter IV with immediate effect as the Office Order dt. 26th Oct. 1996 of the Chief Personnel Manager, C. V./Area, (Ext. 2 /7); hence none of the aforesaid authorities holds good with this case.

Viewing the aforesaid fact, it is held/awarded that the action of the management of Chanchi Victoria Area of M/s BCCL in not protecting the wages of Sri Sukdeo Nonia (Nunia), Auto Fitter, is not legally justified. Therefore, it is hereby ordered that the workman is entitled to full protection of the wages w.e.f. 26-10-1996 with all consequential benefits after fixation of his basic pay of Auto Fitter Gr. IV as also in accordance with the Pay Revision of NCWA. VII.

The Management is directed to implement the award within one month from the date of its receipt after its publication in the Gazette of India. Let an Award be and same is passed as per law. Send the copy of the Award to the Government of India, Ministry of Labour, New Delhi for information and needful.

KISHORI RAM, Presiding Officer/Link Officer.

नई दिल्ली, 21 जून, 2012

का.आ. 2354.-औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 30/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-06-2012 को प्राप्त हुआ था।

[सं. एल-41012/125/97-आई आर (बी-1)]
रमेश सिंह, डेस्क अधिकारी

New Delhi, the 21st June, 2012

S.O. 2354.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/1998) of the Central Government Industrial Tribunal/Labour Court, Kanpur (U. P.) as shown in the Annexure in the Industrial Dispute between the management of North Eastern Railway and their workman, received by the Central Government on 21-06-2012.

[No. L-41012/125/97-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR.

Industrial Dispute No. 30 of 1998

BETWEEN

Purshottam Lal,
Resident of 97 Himmatganj,
Purthottam Nagar,
Allahabad.

Versus

Divisional Railway Manager,
NER, Varanasi.

AWARD

1. Central Government, Mol, vide notification no. L-41012/125/97/IR(DU) dated 23-02-98, has referred the following dispute for adjudication to this tribunal—

2. Whether the action of the management of North Eastern Railway Varanasi in terminating the services of Sri Purshottam Lal son of Hari Lal vide their letter dated 12-01-96 is justified? If not what relief the workman is entitled to?

3. Brief facts giving rise to the present claim is that the claimant was appointed on 3-08-93 and remained in employment continuously for about 872 days and his services were terminated vide letter dated 12-01-96 arbitrarily. It is alleged that the order dated 12-01-96 is illegal unjustified and against the provisions of social and natural justice as detailed herein below. It is also alleged that on the date of passing illegal order terminating the services of the workman neither the workman was paid any notice or retrenchment compensation nor provisions of Section 25F, 25G and 25H of the Act were followed. It is further alleged by the claimant that at the time of passing the above illegal order terminating the services of the claimant juniors to him were retained in the employment of the opposite party. The claimant has further alleged that before passing the impugned order terminating the services

of the claimant no show-cause notice was given to him. The claimant after unlawful determination of his services approached with the officials of the opposite party but all in vain. On 17-05-96 the claimant presented an application before the authorities of the opposite party, on which the officials of the opposite party made an recommendation that he should be reinstated in services of the opposite party, but the opposite party failed to comply with the recommendations as above. On the basis of above pleadings of the case it has been prayed by the claimant that he should be directed to be reinstated in the services of the opposite party with full back wages and all consequential benefits together with seniority.

4. The claim of the petitioner has been contested by the opposite party refuting vehemently the entire allegations made by him in his statement of claim.

5. In the additional grounds taken by the opposite party in their written statement it is alleged by the opposite party that considering the health of the people during Kumbh Mela Reason it has become essential to engage the claimant for scavenging work, therefore, it was not possible for the opposite party to verify his qualification and age therefore to meet out the exigency of work the claimant was engaged. But during the course of investigation it was found that in spite of giving relaxation in age as are being given to the SC/ST candidates the applicant was found over age. Therefore instead of giving notice of retrenchment, the opposite party paid him one month's salary which is in accordance with the provisions of the Industrial Disputes Act. It is denied by the opposite party that the claimant was removed from the service of the opposite party on 12-01-96. It is also admitted by the opposite party that juniors to the claimant are working with the opposite party but since the applicant was over age therefore there was no option left with the opposite party to remove the services of the claimant as it was beyond the competence of the General Manager to waive the age criteria in the case of the claimant. Therefore the claimant is not entitled for any relief as claimed by him.

6. Rejoinder statement has also been filed but nothing new has been stated therein by the claimant.

7. Both the parties have filed the oral as well as documentary evidence.

8. Claimant has filed retrenchment letter dated 9-04-96 which has also been filed by the opposite party, letter of engagement relating to period 1982—89, copy of mark sheet etc. and copy of the proceedings which took place before ALG.

9. Claimant has also filed documents vide list dated 29-09-98 which may be considered to be the repeated documents as had already been filed by the claimant.

10. Opposite party has also filed documents vide list dated 17-10-03. Mostly the paper no.52/2 - 52/4 are relevant to decide the case.

11. Claimant has adduced himself on oath. He has filed his statement as evidence on Affidavit as W.W.1 disclosing the facts.

12. It is a fact that he was initially engaged as a casual labor in the year 1982. A Copy of certificate is paper no. 2. It is also a fact and proved that he was again engaged in the year 1989, a copy of certificate is paper no. 4/5. It is also a fact that he was appointed as a substitute on 3-08-93 against a vacancy and he continued to serve there till 12-1-96. This fact has not been disputed by the opposite party.

13. Opposite party has produced in evidence a witness by name Sri Pradeep Kumar Srivastava who was posted as Skadhi. The claim and the contention of the opposite party is that when the case of the claimant was taken up for regularization or making him permanent then this matter came to the notice of the management that the claimant is over aged and his case for regularization in regular service of the management could not be considered even by the General Manager of North Eastern Railway, Gorakhpur. In such circumstances the claimant has been paid one month's salary and was retrenched in accordance with the provisions of Industrial Disputes Act.

14. Now a question arises, the claimant who is a workman and falls under the definition of workman and also accepted by the opposite party, whether a notice and retrenchment compensation has been paid to the claimant as per provisions of 25F of the Act.

15. I have given due thoughts to this contention raised by the opposite party. Letter/ notice dated 12-01-96 is self speaking, which has been filed by the opposite party. Firstly this letter shows that the claimant was appointed as a Safaiwala—Substitute in the pay scale of Rs. 750-940 on 16-07-93, Additional Divisional Medical Officer Varanasi; whereas while removing him from service an order has been issued by Assistant Engineer Varanasi, which is against the provisions of rules relating to the service rules. In this letter it has been shown that the services of the claimant has been retrenched or dispensed with immediate effect after making a payment of one month's salary i.e. in lieu of retrenchment compensation. It shows that till that date he has not been paid the retrenchment compensation and his termination order has been passed before making of retrenchment compensation.

16. There is another letter of the opposite party dated 9-4-96 paper no.52/3. This letter shows that on 9-04-96 they have indicated to the claimant that the retrenchment compensation could not be paid due to his non availability. Therefore it shows that retrenchment compensation was not paid till that date.

17. The statement made by the opposite party that retrenchment compensation has been paid to the claimant does not appear to be true. There is no documentary

evidence filed by the opposite party which may show that retrenchment compensation has been paid to the claimant on 12-01-96 at the time of termination or thereafter.

18. I have gone through Section 25F of the Act and in that the provision of the said Act it is very specific and mandatory for management. There is no doubt that the workman was in continuous services since 1993 to 96 as has been admitted by the management, but they have not complied with the sub section (a), (b) and (c) of Section 25 F of the Act. Sub Section (A) requires that one months notice in writing indicating reasons for retrenchment has been given or the workman has been paid in lieu of such notice wages for the period of the notice. Sub (b) provides how the wages are to be calculated at the time of retrenchment. According to the evidence adduced by the opposite party there is no such compliance of the above provisions of the act, whereas the claimant has specifically stated on oath that he has been retrenched without the compliance of the mandatory provision of the Act.

19. Therefore considering the evidence of the parties that the evidence adduced by the claimant is reliable and the evidence adduced by the opposite party do not inspire confidence, therefore believing the evidence of the claimant it is held that he has been retrenched by the opposite party entirely in contravention of the provisions of the Industrial Disputes Act.

20. It has been prayed by the claimant that he has completed 60 years of age and he cannot be reinstated in service. This fact has not been disputed by the opposite party.

21. Therefore considering the facts and circumstances of the case, I find that ends of justice would be met if the claimant is awarded a sum of Rs. 50,000 (Fifty Thousand) only by way of compensation instead of reinstatement.

22. Reference is decided accordingly in the above terms.

RAM PARKASH, Presiding Officer

नई दिल्ली, 21 जून, 2012

का.आ. 2355.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रथमा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट (संदर्भ संख्या 27/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-06-2012 को प्राप्त हुआ था।

[सं. एल-12012/171/2006-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 21st June, 2012

S.O. 2355.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2011) of the Central Government Industrial Tribunal-cum-Labour

Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Prathama Bank and their workman, which was received by the Central Government on 21-06-2012.

[No. L-12012/171/2006-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL NO. 1,
KARKARDOOMA COURTS COMPLEX, DELHI

I. D. No. 27/2011

Shri Vijay Babu S/o Shri Kali Charan,
Mohalla Jai Om Nagar,
Amroha, J.P. Nagar,
Amroha (U.P.)

... Workman

Versus

The General Manager,
Prathama Bank, Head Office,
Muradabad, (U.P.)

... Management

AWARD

A messenger employed at Manakjudi branch of Prathama Bank (in short the bank) removed a sum of Rs. 2.50 lac from the cash, which was to be transmitted to Amroha branch of the bank on 31-3-2004. As emerge out of record, on 29-3-2004 a cash of Rs. 14.00 lacs was to be transferred from Manakjudi branch to Amroha branch of the bank. The cash was counted and put in a gunny bag for transportation. Since cash van did not arrive that day, the cash was kept in the chest under double lock. 30-3-2004 was declared holiday. Cash van arrived on 31-3-2004 and the amount, put in double lock, was recounted and transferred to Amroha branch of the bank. At that time it revealed that a sum of Rs. 2.50 lac was missing. The messenger, involved in putting cash in dockets, was interrogated. He confessed his guilt. He subsequently deposited the stolen amount. The messenger was suspended and charge-sheeted. A domestic enquiry was initiated. The messenger opted not to participate in the enquiry. Enquiry was conducted ex-parte. The Enquiry Officer submitted his report to the Disciplinary Authority who dismissed the messenger from service of the bank with effect from 5-11-2004.

2. The messenger, namely, Shri Vijay Babu raised an industrial dispute before the Conciliation Officer. Since the conciliation proceedings failed, the Conciliation Officer transmitted his failure report to the appropriate Government. On consideration of the failure report, the appropriate Government referred the dispute to the Central Government Industrial Tribunal, No. II, New Delhi, vide order No. L-12012/171/2006-IR (B-1) New Delhi, dated 23-2-2007, with following terms:--

“Whether the action of the management of Prathama Bank in dismissing from services to Shri Vijaya Babu son of Shri Kali Charan, Messenger, Manakjudi Branch, J.P. Nagar, Amroha w.e.f. 05-11-2004 on the alleged charges of misconduct levelled against him vide charge sheet No. 311/CS-374/IRD/2004 dated 12-4-2001 is legal, fair and justified? If not, to what relief the concerned workman is entitled to?”

3. Claim statement was filed by Shri Vijaya Babu pleading therein that he was appointed as messenger with the bank on 17-8-1983. He worked satisfactorily and his service record remained un-blemished. On 29-3-2004 cash of Rs. 14.00 lacs was to be transferred from Manakjudi branch to Amroha branch of the bank. The cash was duly counted and put in gunny bags. Shri Veer Singh and Field Officers, namely, Shri Imran Khan and Yad Ram Singh Shini, besides cashier, namely, Shri Sukhan Singh Yadav were present when cash was counted. Unfortunately cash van did not arrive that day. Cash was put in locker by the aforesaid persons. 30-3-2004 was declared holiday. The claimant, being messenger, was not connected with the cash transaction in any manner. On 31-3-2004 the cash van arrived and the bank transferred aforesaid cash to Amroha branch that day. Since two officers of the bank were annoyed with him they decided to get rid of him in any circumstances. The claimant was implicated in false and frivolous case. He was beaten and his signatures were obtained on blank papers.

4. The Claimant projects that on 12-4-2004 a charge-sheet, containing false and frivolous allegations, was served upon him. He replied the charge-sheet. Though his reply was satisfactory, yet with a view to get rid of him Shri M.P.S. Passal was appointed Enquiry Officer. Shri Passal seemed to be biased hence claimant had no faith in him. He had not given any opportunity to the claimant to explain his case. He started enquiry on 1-7-2004 and completed it on 27-9-2004. He submitted his report on 12-10-2004. On 25-11-2004 he was dismissed from service without any show-cause notice. He claims that his dismissal from service is violative of the principles of natural justice. He seeks re-instatement in service of the bank with continuity and full back wages.

5. The bank demurred the claim pleading that the claimant confessed his guilt in letter dated 1-4-2004 addressed to the Chairman of the bank. On that day he deposited a sum of Rs. 20,000.00 by filling deposit slip in his own hand, which amount was deposited in suspense account. On 1-4-2004 he filled in another deposit slip and a sum of Rs. 2.30 lacs was deposited in suspense account, toward stolen money. Even on 31-3-2004 he addressed a letter to the Branch Manager wherein he confessed that a sum of Rs. 2.50 lac was stolen by him. Reply to the charge-sheet was found not to be satisfactory. It has been denied that the Enquiry Officer was biased. The bank claimed that number of opportunities were accorded to the claimant to

defend himself. The claimant opted not to join enquiry proceedings despite various opportunities given to him. The Enquiry Officer was constrained to conduct the enquiry ex-parte. When his report was submitted to the Disciplinary Authority, the claimant was given a copy of the report, with an opportunity to submit his comments within a period of 7 days. When claimant opted not to give his comments, a show-cause notice dated 11-11-2004 was issued calling upon him to explain as to why punishment of dismissal should not be awarded to him. The claimant branded the notice as completely ‘illegal’ and offered no comments. The Disciplinary Authority awarded punishment of dismissal, vide order dated 18-1-2005. Appeal dated 18-1-2005 was considered and dismissed by the Appellate Authority. It has been pleaded that punishment awarded to the claimant commensurate to his misconduct. His claim is liable to be dismissed being devoid of merits, pleads the bank.

6. Vide order No. Z-22019/6/2007-I (C-II), New Delhi dated 30-3-2011 the case was transferred to this Tribunal by the appropriate Government for adjudication.

7. On pleading of the parties the following issues were settled :—

- (1) Whether the enquiry conducted by the bank against the claimant is just, fair and proper ?
- (2) Whether the punishment of dismissal awarded to the claimant commensurate to his misconduct ?
- (3) As in terms of reference.
- (4) Relief.

8. Issue as to virus of the enquiry was considered as preliminary issue. On consideration of facts testified by Shri A.K. Singh and the claimant, the preliminary issue was answered in favour of the bank and against the claimant, vide order dated 9-1-2001.

9. Arguments on proportionality of punishment were heard. Shri Vikas Bhatia, authorised representative, advanced arguments on behalf of the claimant. Shri Bhuvan Srivastava, authorised representative, presented facts on behalf of the bank. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

ISSUES NOS. 2 & 3

10. Charge-sheet served on the claimant unfolds that on 29-3-2004 the Area Manager visited Manakjudi branch of the bank and found cash in excess of the stipulated limit, hence directed the branch Manager to remit excess cash to Amroha branch. Hence an amount of Rs. 14 lacs was withdrawn from cash safe of the branch for the purpose of remittance. An amount of Rs. 2.5 lacs was stolen by the claimant from the bag in which aforesaid cash of

Rs. 14 lacs was kept. The amount remaining in the bag was kept again inside the cash safe without counting, since cash van from Amroha branch could not reach Manakjudi branch that day due to some defect. On 30-3-2004 it was a holiday due to 'Ramnavmi'. On 31-3-2004 the cash was taken out by the claimant from the cash safe for putting the dockets on cash for remittance. At about 3.30 P.M. Shri B.S. Yadav, Manager Area Officer Amroha came to Manakjudi branch with the cash van. Cash of Rs. 14.00 lac was handed over to him after counting. Thereafter when cash was tallied an amount of Rs. 2.50 lacs was found short. When branch Manager enquired from Shri Vijaya Babu in that connection, he told that the cash was kept in cashier's cabin. When the cashier was asked to bring the cash Shri Vijaya Babu told the cashier that the amount was kept under double lock. After that Shri Vijaya Babu brought cash of Rs. 14 lacs from Shri B.S. Yadav, Manager, Area Officer without any body's reference by saying that probably excess cash was given to Shri Yadav. In view of his ambiguous activities, Shri Vijaya Babu was interrogated, then he accepted before the staff of the branch to have stolen an amount of Rs. 2.50 lacs.

11. The charge-sheet further proceeds that on 1-4-2004 Shri Akhlesh Kumar Sharma, Manager, Customer Service Cell, Head Office and Area Manager, Amroha Area visited Manakjudi Branch for enquiry into the issue of cash shortage. Shri Vijaya Babu accepted in presence of these two officers to have stolen cash of Rs. 2.50 lacs, out of cash of Rs. 14.00 lacs, kept in the bag on 29-3-2004 and informed by writing a letter that due to being indebted towards some people, who threatened him for life and on account of economic and mental problems he stole the amount of Rs. 2.5 lacs on 29-3-2004. When the incident of theft came to light he deposited the amount stolen by him.

12. The Enquiry Officer gave ample opportunities to the claimant to join enquiry proceedings but in vain. The claimant was obsessed not to join the enquiry proceedings and claimed that it was not within the competence of the bank to initiate an enquiry in the matter of theft, which was a cognizable offence. His posture of indifference towards the enquiry led the Enquiry Officer to proceed ex-parte. The Enquiry Officer examined the witnesses, namely, Shri B.S. Yadav, Shri V.K. Rastogi and Shri Akhlesh Kumar Sharma. When claimant failed to join enquiry, principles of natural justice could not be accorded to him in absentia. Since the claimant did not avail the opportunity to defend himself in the enquiry, then subsequently he cannot challenge the enquiry claiming to be violative of principles of natural justice. Normally in a quasi judicial proceedings a party is not to be heard who absents himself from the hearing and if the quasi judicial authority holds proceedings in such a case, then it will not amount to mis-conduct on his part. The Enquiry Officer cannot be held guilty of violative of principles of natural justice when charged employee cocks

a snook at him and keeps himself away from the enquiry. Under these circumstances it does not lie in the mouth of claimant to say that he was not given full opportunities to defend himself. Even otherwise those aspects have been considered in order dated 9-2-2012, when preliminary issue was adjudicated.

13. In his report the Enquiry Officer reached the conclusion against the claimant. The conclusions so reached by the Enquiry Officer, are extracted thus:—

- (a) Shri Vijaya Babu, Messenger, currently under suspension had stolen an amount of Rs. 2.50 lacs on 29-3-2004 from the bank's cash while working as messenger at Manakjudi branch. Letter dated 1-4-2004 MEX-I written by him to the Chairman of the Bank itself proves it.
- (b) It is the charged employee himself who had handed over the amount of Rs. 14.00 lacs to Shri B.S. Yadav for remittance and when shortage of Rs. 2.5 lacs came to light, he brought Rs. 14.00 lac back from Shri Yadav without any order from any officer.
- (c) On 31-3-2004 the charged employee had accepted in presence of branch staff that theft of Rs. 2.5 lacs was committed by him.
- (d) On 1-4-2004 the charged employee had accepted before Shri Ashish Kumar Sharma, Manager, Customer Services Cell, Head Office and Shri V.K. Rastogi, Area Manager, Amroha Area to have stolen the amount of Rs. 2.5 lacs from the cash of Rs. 14 lacs and also handed over a letter written to this effect.
- (e) The amount of Rs. 2.5 lacs stolen from the branch was deposited in the branch on 1-4-2004 and 2-4-2004.

It is clear from above conclusion that charge of stealing the amount of Rs. 2.5 lac from the bank cash on 29-3-2004 levelled against charged employee, vide charge-sheet No.311/CS-374/TRD/2004 dated 12-4-2004, is proved beyond doubt and the same is in violation of regulation No. 19 of Prathma Bank (Officers and Employees) Regulations, 2001 and against the interest of the bank. The acts committed by the employee is punishable under Regulation 38.

14. Theft committed by the claimant was not of trifling amount. The claimant had stolen a sum of Rs. 2.5 lacs. An offence of theft is a serious misconduct. In Delhi Cloth and General Mills [1960 (1) LLJ 520] dismissal of a workman for stealing bicycle of a co-employee was held to be justified by the Appex Court. An offence of theft committed by an employee shows that he is dishonest and his suitability and reliability to continue in service may be affected by that reason and will have a bearing on the contract of service. Commission of such an offence may be a good

ground for dismissing such an employee from service.

15. In inflicting punishment for misconduct of theft, the nature of theft is an important factor. In case of a minor or trifling amount of theft, punishment of dismissal from service may be unwarranted and unsustainable. Here in the case the claimant committed a theft of Rs. 2.50 lacs from cash of the bank. He admitted his guilt before the officers of the bank and subsequently made the loss good. These facts bring it to the light of the day that it was the claimant who had committed theft of a heavy amount from cash of his employer. An employer is not supposed to repose confidence in such an employee. These circumstances make it apparent that punishment of dismissal from service without any notice, awarded to the claimant, commensurate to his mis-conduct. Consequently, issues are answered in favour of the bank and against the claimant.

Relief.

16. Since punishment of dismissal from service without notice awarded to the claimant by the bank, is found to be proportionate to his misconduct, the claimant is not entitled to any relief. This Tribunal does not find any reason to set aside order of dismissal and to award any other punishment in lieu of his dismissal. His claim is liable to be dismissed. Accordingly, the claim put forward by Shri

Vijya Babu is dismissed. An award is passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication.

Dated : 8-06-2012

Dr. R. K. YADAV, Presiding Officer

नई दिल्ली, 21 जून, 2012

का.आ. 2356.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दक्षिण रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 62 से 67/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21-06-2012 को प्राप्त हुआ था।

[सं. एल 41012/28 से 33/2011 आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 21st June, 2012

S.O. 2356.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the Award (Ref. No. 62 to 67/2011) of the Central Government Industrial Tribunal-cum-Labour-Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Sourthern Railway and their workman, received by the Central Government on 21-06-2012.

[No. L-41012 28 to 33/2011-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 31st May, 2012

Present: A. N. JANARDANAN, Presiding Officer

I. D. Nos. 62, 63, 64, 65, 66, & 67 of 2011

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Southern Railway and their workmen)

S. No.	ID No.	Reference No. & Date	Name of the 1st Party-S/Sri	Name of the 2nd Party
1	2	3	4	5
1.	62/2007	L-41012/28/2011-IR(B-I) dated 05-08-2011	E. Sridhar	The Divl. Personnel Officer Southern Railway Chennai Division Park Town Chennai-600003
2.	63/2007	L-41012/29/2011-IR(B-I) dated 08-08-2011	C. Porchezian	The Divl. Personnel Officer Southern Railway, Chennai Division, Park Town Chennai-600003
3.	64/2007	L-41012/30/2011-IR(B-I) dated 05-08-2011	Jaisankar	The Divl. Personnel Officer Southern Railway, Chennai Division, Park Town Chennai-600003

1	2	3	4	5
4.	65/2007	L-41012/31/2011- IR(B-I) dated 08-08-2011	N. Selvan	The Divl. Personnel Officer Southern Railway, Chennai Division, Park Town Chennai-600003
5.	66/2007	L-41012/32/2011- IR(B-I) dated 08-08-2011	S. Murali	The Divl. Personnel Officer Southern Railway, Chennai Division, Park Town Chennai-600003
6.	67/2007	L-41012/33/2011- IR(B-I) dated 08-08-2011	S. Mohan Raj	The Divl. Personnel Officer Southern Railway, Chennai Division, Park Town Chennai-600003

Appearance:

For the 1st Party/Petitioner : Sri A Parthasarathy, Authorized Representative
 For the 2nd Party/Management : Sri K. Muthamil Raja, Advocate

COMMON AWARD

The Central Government, Ministry of Labour and Employment vide the above order of references referred the IDs mentioned above to this Tribunal for adjudication:

2. The schedule mentioned in the order of reference in the above IDs are as under:

ID 62/2011

"Whether the demand of the workman Sri E. Sridhar for regular employment in the Basic Bridge Yard Railway Canteen which is a statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

ID 63/2011

"Whether the demand of the workman Shri C. Porchezian for regular employment in the Basic Bridge Yard Railway Canteen, which is a statutory canteen of Southern Railways, is legal and justified? To what relief the workman is entitled?"

ID 64/2011

"Whether the demand of the workman Sri Jaisankar for regular employment in the Basic Bridge Yard Railway Canteen, which is statutory canteen of Southern Railways, is legal and justified? To what relief the workman is entitled?"

ID 65/2011

"Whether the demand of the workman Sri N. Selvan for regular employment in the Basin Bridge Yard Railway Canteen, which is a statutory canteen of Southern Railways, is legal and justified? To what relief the workman is entitled?"

ID 66/2011

"Whether the demand of the workman Sri S. Murali for regular employment in the Basin Bridge Yard Railway Canteen, which is a statutory canteen of Southern Railway, is legal and justified? To what relief the workman is entitled?"

ID 67/2011

"Whether the demand of Sri S. Mohan Raj for regularization of his services in the statutory canteen of Southern Railway is legal and justified? To what relief the workman is entitled?"

3. After the receipt of Industrial Disputes, this Tribunal has numbered it as ID 62, 63, 64, 65, 66 & 67 of 2011 and issued notices to both sides. Petitioners entered appearance through authorized Representative, Second Party through an Advocate viz. Muthamil Raja and filed their Claim and Counter Statements as the case may be.

4. In all these cases, the claims of the petitioners are common. On behalf of the petitioners, a petition was filed for joint trial. Since the issues are the same, common set of documents is adopted. Petition is recorded. The petitioners have also adduced evidence in common for all the IDs.

5. The averments in the separate Claim Statements but common or the same in all, briefly read as follows :

The petitioners, six in numbers viz. S/Sri E. Sridhar, C. Porchezian, Jaisankar, N. Selvan, S. Murali and S. Mohanraj served in the statutory canteen of the Southern Railways called as Basin Bridge Yard Canteen. It is a Statutory Canteen. The regular workmen are railway employees in all means. Canteen belongs to Indian Railways. That status made the canteen workers also Railwaymen by

Hon'ble Supreme Court of India in a case of Canteen Workers of Railways Vs. Union of India in early 1990 (1990-2-LLN-197). Hence any Railway Canteen, either statutory or not statutory are treated as part and parcel of the Railways. As such the workmen of such canteen are all Railwaymen. The petitioners represented many times to the higher officials. They filed cases before Central Administrative Tribunal as OA 611/2008. Central Administrative Tribunal ordered the representations to be disposed by the First Respondent. Thereupon the Duty Chief Personnel Officer rejected petitioner's demand as per letter no. P(W)140/engagement of CLs Volume-II dated 30-12-2009 by RPAD to the representing union and the petitioners. Thereupon an ID was raised before Assistant Commissioner of Labour (Central), Chennai which having ended in a failure, the reference is occasioned on 5-08-2011. Petitioners have been serving in the Canteen for many years in all jobs of Canteen on par with the regular workers of the Canteen who are all getting the wages and benefits. But Casual labourers are paid only Rs. 40 per day basis on monthly basis. This is less than the wages fixed by the Tamil Nadu Government for catering employees under the Minimum Wages Act, 1948 and the Central Government fixed per day wages. In the past many such casual labourers and extra labourers (ELR) were regularized in Railway. The casual/petitioners were demanding regularization and wage parity with others on the basis of equal pay for equal work which were not considered ever. The petitioners suffered a lot. In the Respondent Canteen in the dispute on hand about 11 employees are in the regular list of employees. In the casual list there are 6 names which are names of the petitioners. The petitioners filed a roster of weekly holidays to employees on 30-09-2009 in which the Canteen Manager and the Divisional Head (ADME/BBQ) signed. The Canteen works all the days of an year. Time to time Railway Board issued circulars over Canteens. Southern Railway Administration is not willing to help the workers who suffered a lot for long. An award is to be passed directing the Southern Railway to regularize the petitioners as Railway Servants with all attendant benefits. Since the wages paid all through ignore all norms, law and rules may be specifically considered and award suitable compensation to them.

6. Counter Statement averments briefly read as follows:

ID is not maintainable in law or on facts. Among the two types of Canteens in the Railways

generally viz. Statutory and Non-Statutory (recognized), Statutory canteens are established under Section-46 of the Factories Act and Non-Statutory Recognized Canteens are set up generally as a welfare measure where the staff strength is 100 or more. Where the Staff Strength was not less than 25 but less than 100 different rules were set up. The staff in these canteens were engaged by Cooperative Societies formed for the purpose. Some such employees filed Writ Petitions before the Supreme Court, MMR Khan and Others Vs. Union of India, for absorption as regular railway servant. On 27-02-1990 Supreme Court held that the Staff in the statutory and non-statutory canteens have to be treated as railway employees and the holders of civil post and the staff working under the non-statutory, non-recognized canteens were not entitled to be treated as railway servants. Employees of departmental canteens/tiffin rooms were declared as holders of civil post under Government of India Notification dated 11-12-1979. By the notification all posts in the canteens were treated as in connection with the affairs of the union and hence as holders of civil posts. Service Rules were accordingly framed under Article-309 of the Constitution. Thus employees of statutory and non-statutory canteens were held employees of the railway administration. In the case of non-statutory canteens run on ad-hoc basis railway administration had no control. Hence they were held not entitled to the status of railway servants. By reason of the judgment dated 20-10-1980 and 27-02-1990 Railway Board treated the employees of the statutory canteens and other Delhi based non-statutory canteens on railways as railways servants w.e.f. 22-10-1980 and non-statutory canteen employees as railway servants w.e.f. 1-04-1990. As such both statutory and non-statutory canteen employees are governed by the terms and conditions like the Railway Services Revised Pay Rules 1996, leave, pass and privilege ticket order, medical facilities, staff quarters, discipline and appeal rules, hours of employment regulation, provisions of Group Insurance Scheme, 1980 and pension and the bonus benefits. Grant of subsidy to non-statutory canteen was stopped from 1-04-1990. Railway Board formulated recruitment rules for the statutory and non-statutory canteens by letter dated 27-05-1992. Finalizing avenue chart direct recruitment was made in the cadres of Manager, Clerk, Assistant Cook, Assistant Halwai Grade-I and Group 'D' categories like vendors/bearers, salesman, etc. Railway Board continued to constitute managing committee of the non-statutory canteens to help

in the day to day working. Its function is purely advisory. Petitioners had started working in the canteen from the year 2004. Canteen staff already working in the canteen were regularized in 1993. Therefore, the petitioners were not engaged by the Railway Administration in accordance with Recruitment Rules. They were engaged by the canteen committee which was constituted without any authority from the Railway Administration. Their salary was paid out of the funds maintained by the Canteen Committee. No appointment orders or identity cards were issued and no muster was maintained for them. They were never engaged by the Railway but were irregularly engaged by the Canteen Committee without approval of Railway. Such practice is against the provision in the circular of the rules framed by Railways. Their salary was paid by the Central Yard Canteen out of the funds raised by them. Petitioners are therefore not employees and cannot be regularized against the law laid down by the Apex Court in the SECRETARY, STATE OF KARNATAKA VS. UMADEVI (2006-4-SCC-1). It is clear that there cannot be a direction to regularize the illegal appointments. Appointments of petitioners by the Canteen Committee are contrary to the Recruitment Rules and also in having not been made through the Railway Recruitment Board. Petitioners are not railway employees. Their appointment by Canteen Committee is irregular and cannot be regularized. The provision that in all statutory canteens all workers should be treated as workman will not apply to the facts of the present case. The erstwhile staff already having been regularized in compliance with the Supreme Court direction in MMR Khan's case no more staff is to be regularized. Petitioners are not casual labour. In the absence of labour card produced they cannot be treated as casual labours. The Canteen Advisory Committee has no powers to engage the petitioners and the same was done without the approval of the General Manager. At no point of time they were paid from the Railway revenue and hence their representations were rejected by Railway General Manager on 30-12-2009. There are no posts sanctioned for their appointment. Ministry of Railways has laid down that the Advisory Committee could not make appointment and also rules for recruitment of the staff in Canteen Committee. They have not furnished any document or record purported to have been issued by the Railway Administration. They cannot be treated neither as casual labour nor regular railway servants. Petitioners' names have not figured in the provisional seniority list of

statutory and non-statutory canteen employees published in 1994. It is clear that petitioners were not engaged as on 1-04-1990 in the Yard Canteen. They cannot be regularized against the provisions of the Recruitment Rules framed by the Ministry of Railways vide letter dated 27-05-1992. There is no master-servant relationship between the petitioners and the railway. Canteen Managing Committee will be advised to disengage them which has only advisory role and has no right to engage petitioners against the Recruitment Rules. Petitioners have no legal right to be absorbed. As held by the Supreme Court in Union of India Vs. J.V. Subbiah (1996-SCC-L&S-558) the employees of Railway Cooperative Stores/Society registered under the statute of a State by Railway Administration pursuant to non-statutory instructions were neither railway servants nor entitled to parity with them on any aspects. Equity under Article-14 of the Constitution does not apply since the order of the Tribunal was clearly, unsustainable in law which can never be the basis to hold that the other employees are invidiously discriminated. While the petitioners were admittedly engaged in the year 2004 their stated age being either overage or underage does not appropriate to the eligibility level for engagement under the Railway. Hence that they were engaged by the Railways is not correct. The claims are only to be dismissed.

7. Points for consideration are :

- (i) Whether the demands of the workmen for regular employment in the Basic Bridge Yard Railway Canteen, a Statutory Canteen of Southern Railway is legal and justified?
- (ii) To what relief the concerned workmen are entitled?

8. Joint trial of all the IDs, 6 in numbers was allowed on the move on behalf of the petitioners by filing an IA for the purpose and the evidence was recorded in ID 62/2011.

9. Common evidence consists of the testimony of WW1 and Ex. W1 to Ex. W15 on the petitioner's side and the testimony of MW1 and Ex. M1 to Ex. M5 on the Respondent's side.

Points (i) & (ii)

10. Heard both sides. Perused the records, documents, evidence and the written arguments on either side. Both sides keenly argued clinging to their respective contentions in the pleadings with support of the documents and evidence and on a number of decisions of both the Apex Court and High Courts. The substance of the contentions on behalf of the petitioner is that the Basin Bridge Yard Canteen catering to the needs of many railways

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servants numbering to more than 1500 though is a statutory canteen but is treated as a non-statutory canteen (recognized). There is no much difference between the two canteens. The Management Committee cannot come into being without the knowledge of the management. Petitioners served for many years. Though the function of the committee is stated only as advisory, admittedly its activity is also taken to include engaging manpower to run the canteen, which is also set to maintain their own fund. It is a fact approved by the Railways. The Canteen Committee in its meeting dated 24-10-2011 of which Ex.W15 is a copy enhanced the wages of petitioners from Rs. 40 to Rs. 80 per day, which is a financial commitment incurred by the Advisory Committee. Ex.M4-Summary Sheet of the Advisory Committee from March 2011 to July 2011 well discloses the accounts of the Canteen in all details. It is described as balance sheet by the management. If the engagement of the petitioner by the committee was without the authority of the railways and hence if it be an error the responsibility is on the railway which appointed the committee. The decision in Uma Devi's case is not applicable to the case on hand. It is prime duty of the railways to create necessary infrastructures to run statutory and non-statutory canteens (recognized). But the railway failed to act in that line in all means. Though a Canteen Committee cannot be an employer to canteen employees the Canteen Committee here acted as employer and continued to function as authorities in all means said to be owners. This remained unquestioned by those concerned without being corrected. The Railway Canteen in all aspects run by the Committee only consists of railway servants. In support of the stand of the management that the petitioners were never engaged by the Railway Administration and were engaged by the Canteen Committee without approval of the Railway Administration which is against the circular based on the recruitment rules framed by the Railways and was sought to be corrected, also by launching disciplinary action against the committee, no action has ever been taken. It is the said Committee which on 24-10-2011 enhanced the daily wages of the workers from Rs. 40 to Rs. 80 even during the pendency of the dispute. The Committee also enhanced the price of the consuming items also. In Industrial Establishments there may be various categories of workmen like Casual, Temporary, Regular, etc. The same can again be classified into manual, unskilled, semi-skilled, skilled and so on. Whatever be the classification, they are workmen. Without the knowledge of the Officers of the Railways especially personnel branch they are not working. All of them are to be treated as Railwaymen. The workmen engaged by the Committee duly formed under the Railways are also workers and not strangers. Their appointment has to be regularized for which the ultimate responsibility is in the hands of the Railway Administration.

11. Reliance was placed on behalf of the petitioners on a number of decisions of the Apex Court and various

High Courts in

- SECRETARY, STATE OF KARNATAKA AND OTHERS VS. UMADEVI AND OTHERS (2006-3-LLN-78) wherein the Apex Court held "53....In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily-wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."
- JUDGMENT DATED 02.08.2010 DELIVERED BY HON'BLE JUSTICE S. NAGAMUTHU IN WP NOS. 16347 TO 16357 OF 2001 IN RAILWAY DIVISIONAL MANAGER, SOUTHERN RAILWAY VS. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, CHENNAI wherein it was held "7... It is not as though for reasons like want of vacancy or for any other valid reason, these respondents have been retrenched. It is the contention of the petitioner that the respondents were retrenched because they were not regular railway servants, but, only piece rated daily wage workers. This contention runs contrary to the direction issued by the Hon'ble Supreme Court and therefore, the same cannot be accepted at all. Except the said reason, no other valid reason has been cited by the petitioner-Management to justify the retrenchment of these workers."
- TNSC (MADURAI DIVISION-IV) LTD., DINDIGUL VS. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL AND ANOTHERS (2010-V-LLN-703) the Hon'ble High Court of Madras held "Item (10) of Sch. V of Industrial Disputes Act prohibits an employer from engaging workmen as "badlis," "casuals" or "temporaries" and to continue them as such for years depriving them status and privileges of permanent workman—In view of ratio laid down by Apex Court in Maharashtra State Road Transport Corporation v. Casteribe Rajya Parivahan Karmchhari Sanghatana (2010-3-LLL-552), held, award passed by Tribunal is legally valid and does not call for interference".

- **UTTAR PRADESH STATE ELECTRICITY BOARD VS. PURAN CHANDRA PANDEY AND OTHERS (2008-1-LLN-965)** the Apex Court held "11. Learned Counsel for the appellant has relied upon the decision of this Court in *Secretary: State of Karnataka and others v. Umadevi and Others (2006-3-LLN-78)*, and has urged that no direction for regularization can be given by the Court. In our opinion, the decision in *Uma Devi*" case (vide supra), is clearly distinguishable. The said decision cannot be applied to a case where regularization has been sought for in pursuance of Art. 14 of the Constitution."
- **KANPUR SURAKSHA KARMACHARI UNION (REGD) VS. UNION OF INDIA AND OTHERS (1988-2-LLN-919)** the Apex Court held "A canteen is an integral part of the defence establishment belonging to the Union of India. There cannot be a canteen without sufficient number of workers working in the canteen. They have to be appointed by the occupier. Otherwise he would not be fully complying with S.46 of the Act. The managing committee cannot be the employer of those workmen in the true sense of the term. The managing committee constituted under S.46 of the Act which is not an incorporated body and whose financial position is uncertain cannot be considered to be the employer who has to bear the legal responsibilities under the several labour laws in force in India".
- **MMR KHAN AND OTHERS VS. UNION OF INDIA AND OTHERS (1990-2-LLN-197)** the Supreme Court held "A classification made between the employees of the two types of canteens would be unreasonable and will have no rational nexus with the purpose of the classification. Surely it cannot be argued that the employees who otherwise do the same work and work under the same conditions and under a similar management have to be treated differently merely because the canteen happens to be run as an establishment which employees 250 or less than 250 members of the staff. The smaller strength of the staff may justify a smaller number of the canteen workers to serve them. But that does not make any difference to the working conditions of such workers".
- **PARIMAL CHANDRA RAHA AND OTHERS VS. LIFE INSURANCE CORPORATION OF INDIA AND OTHERS (1995-1-LLN-816)** Supreme Court held "23 The entire running of the canteens including the work of the employees is subject to the supervision and control of the agency of the railway administration whether the agency is the

staff committee or the society. In the Establishment Manual the legal responsibility for running the canteen ultimately rests with the railways, whatever the agency that they intervene. The number and the category of the staff engaged in the canteen is strictly controlled by the administration".

12. Arguments on behalf of the Respondent are that as admitted by WW1 Ex. W1-Photo ID does not contain the signature of the Railway Officer, no labour card has been produced, that there is no date of issue or date of expiry of ID Card. Ex. W1 is fabricated. No appointment letter has been produced. The petitioners entered into the canteen without any authority and authorization from the Railways. Railway absorbed employees working in the canteen till 1990 under Ex. M1. Under Ex. M2 Railway Recruitment Rules have been formulated. Under Ex. M3 the Management Committee of the Canteen has only advisory function and nothing more than that. Ex. M4-Balance Sheet shows funds raised by Canteen and wages paid out of it. There is no payment of wages to the petitioners by the Railway. The petitioners have no case on merit. Their employment cannot be regularized.

13. On behalf of the Respondent also reliance was placed on the decision of the Supreme Court in—

- **SECRETARY, STATE OF KARNATAKA Vs. UMA OEVI (2006-3-LLN-78)**. It was clung to the stand that in any case the petitioners are not entitled to regularization.

14. The case of the petitioners is that they have been working under the Canteen since some years in the past and are entitled to be regularized. But they have not been able to prove by reliable documentary or oral evidence to show that they got appointment order from the authorities for their posting. Ex. W1-Photo ID Cards issued to the petitioners evidently do not show the date from which or until which they relate. A contention is canvassed on behalf of the Respondent that they are only fabricated for the purpose of this case. No Labour Card also has been produced by them to prove their case. The petitioners do not have any specific case as to from which date the commencement of their working under the Railway Canteen started. But the Respondent's case is that they started working from the year 2004. Evidently Railway Rules have been framed for the recruitment of Canteen Staff as early from 1991 for recruitment to the Canteen Staff as the Staff Members of Canteen. Whether statutory or non-statutory (recognized) all are railway servants. According to the Respondent the petitioners are not railway servants and they have never been appointed by or with the approval of the Railway. A Management Committee evolved for looking into the day to day affairs of the Canteen has only advisory functions and it does not have any authority to make appointment against Canteen Staff. Respondent argues.

Admittedly the petitioners are even now working in the Canteen. Admitted facts need not be proved. Hence any lacunae or inadequacy in the evidence of the petitioners to prove their case is not of any significance. So much so the highlighted fact that they never got appointment order, labour card, photo ID card duly signed by competent authorities, etc. to deny them to have worked in the Canteen at all, really pales into insignificance in order to sustain proof that they started working as staff of the canteen in the Railway Canteen at Basin Bridge. The present question is whether they are entitled to a regularization or not? The petitioners do not seem to have averred in the Claim Statement that they have been working from such and such date or that by now they have had completed not less than 240 days in an year under which they could be regarded to have been in permanent status by reason of the rendition of one year's continuous service. It is the Respondent, which has pleaded that the petitioners commenced working in the Canteen from the year 2004. What the petitioners have pleaded in the Claim Statement is that they have been serving in the Canteen since years which is without reference to any specific date as to the exact date from which they started working. Even the case of some workers included as petitioners viz. S/Sri N. Selvam and C. Porchezian who claimed to have entered into the service of the Canteen in 1987 and 1989 respectively do not have such versions in their Claim Statement. Regarding the aspect of the commencement of the service of the petitioners as early by the year 2004 that fact requires elucidation by the petitioners with all details. However, since that fact is not denied rather has been averred as true by the Respondent in the Counter it may well be taken for granted that the petitioners really started their service in the Canteen as workers from the year 2004 in the nature of casuals and paid @ Rs. 40 per day on a monthly basis which is seen revised to Rs. 80 per day with the same mode of payment. The conduct of the Railway Administration is such as to disown the responsibility for the appointment of the said workers in the Railway Canteen for the reason assigned that after the formulation of the Recruitment Rules there cannot be any appointment of staff in the Canteen other than through the regular recruitment rules and procedures. Their case is that once the Recruitment Rules have come into vogue, the recruitment has to be made only through the process provided thereunder and the petitioners could not have been appointed by the Management Committee or even by the Railway Administration without recourse to the said rules and procedure. This statement is nothing short of a version regarding the normal rules and procedure followed mostly. But it does not mean that no employer can avoid the necessity of having to engage workmen or employees in connection with the emergencies arising out of new or unforeseen circumstances to carry out the activities of the institution over and above the regular employees in particular situations. For the purpose, what is resorted to

is engagement of casuals, daily wagers, temporary workmen, etc. As pointed out by the Authorized Representative for the petitioners since the Administration having failed to provide for the appointment of sufficient staff from time to time to cater to the needs of large number of employees arriving at the Canteen for their food and drinks, the engagement of the petitioners was necessitated. It was done by the Management Committee and the same cannot be said to be illegal. It may at best be irregular and not at all illegal because such situations are not unknown to law and procedures adopted in the institutions by way of a pragmatic approach to tide over situations emerging imminently due to casual or unexpected reasons to cope up with or manage the activities of the institution in particular situations or contingencies. The arguments on behalf of the Respondent are that in view of the decision in Uma Devi's case the petitioners cannot be regularized at all. But the above arguments on behalf of the Respondent are without taking into consideration the fact that the said decision is applicable only to an action initiated under Article-32 and 226 of the Constitution. The ID Act, 1947 bars an employer from engaging workmen as "badlis", "casuals" or "temporaries" and to continue them as such for years depriving them the status and privileges of permanent workmen. Discernibly the decision in Uma Devi's case does not inhibit the claim of the petitioners.

15. The decisions cited on behalf of the petitioner lays down that Uma Devi's case cannot be applied to a case where regularization has been sought for in pursuance of Art.14 of the Constitution and also that principle of reasonableness in executive action has to be applied. It is also held in a decision cited supra that Managing Committee under Section-46 of the Factories Act which cannot be considered to be employer is not to bear the legal responsibilities under several labour laws in India. There is employer-employee relationship created between the Railway Administration and the canteen employees from the very inception. Workers in Statutory Canteens run by Railways compulsorily come under Section-46 of Factories Act are employees of Railways.

16. The petitioners were engaged by the Canteen Committee which was constituted without authority from the Railway as Respondent argues. This cannot be found to be true in view of the decisions mentioned above. It cannot also be true for the reason that this Committee functions only under the supervision and control of the Railway Administration. It cannot assume to itself vital functions like payment of wages for the petitioners from the income or receipts collected by way of the canteen business. It cannot enhance the daily wage of Rs. 40 to Rs. 80 without the approval, say, even tacit approval of the Railway Administration. If it could do so, it cannot do so without usurpation of the power of the Railway Administration. If the Committee is found to be usurping the powers of Railway Administration could it survive

before the mighty Railway Administration even for a moment? Therefore all these are contentions emanating from the Respondent not worthy to be approved. The Management appears to be bent upon playing unfair labour practice upon petitioners by continuing them as "Casuals" or "Badlis" so as to deprive them their benefits to which they may become entitled as regular workmen. Uma Devi's case decision is not apt for application in the given context and is therefore not at all relevant to deprive the petitioners their due claim. The said decision, on the other hand, provides for regularization of casual labour on a one-time measure so that they do not suffer victimization in unfair labour practice at the hands of their employers. Though there is no appointment order the appointment of the petitioners is admitted by the Respondent. The appointment by the Managing Committee while is assailed as illegal it is only assailed as irregular in another context of the pleading constituting the set of facts pleaded in defending the claim of the petitioners by the Respondent. For the reason of the appointment being irregular the claim for regularization is not to be totally denied. If for any reason of any violation of the labour legislations in case the petitioners are found to be entitled to any benefit thereunder say for example, in a case of unfair labour practice, it is not legitimate to say that they cannot be regularized at all. While it is alleged that petitioners are neither regular employees nor casual labour a greater responsibility is cast on the Respondent to explain in what category of workmen they can be comprised or pigeonholed. That the petitioners commenced service under the Respondent, continued their service and are still continuing in service are undisputed facts. Allowing them to continue in the same status is nothing short of victimization in unfair labour practice. In order to set right such a social evil they are only to be regularized in their existing avocations. It is especially so when the Management in unambiguous terms or categorically do not deny that they were employed by the Managing Committee. It is also pertinent to ask, if the Managing Committee has no powers to engage them and it was done without approval of the General Manager how could they continue from at least the year 2004 and till now with the trend of their subsisting continuance in whatever status they are at present. It is in a context like this that employees who came into engagement not through the recruitment process but in some other way, not illegal but may be irregular, here through the Managing Committee which is not assailed as a backdoor entry, it being only a regular appointment and not an illegal appointment, such casuals are considered for regularization so as to save them from unfair labour practice played by their employers to meet the ends of social justice. Here is an Advisory Committee which is not engaged merely in advising but it discernibly travels into other areas such as payment or discharge of financial obligations, enhancement of the wages of the petitioners, etc. which fact having not been shown to be objected to by the Railway Administration, is the Managing

Committee one merely doing advisory function alone is a question pertinent to be raised. Non-production of any document or record by the petitioners issued by the Railway Administration is also of no importance, since, that the petitioners were engaged is virtually admitted. The fact that the names of the petitioners have not figured in Provisional Seniority List, the antiquity of, which publication relates to 1994 is not at all relevant in as much as petitioners case mostly, as admitted by the Respondent too is that they commenced service from 2004. For a right to blossom in favour of the petitioners for regularization it is not required to be proved that they were engaged as on 1-04-1990. Master-Servant relationship interse the petitioners and the Railway Administration cannot be denied to them. Whatever be the eligible criteria answering to the demands of their engagement including age factor the fact remains that they stood engaged at least from 2004. So much so, as to what their ages were at that time is not relevant. This is also one among the supervening reasons to make their appointment irregular which is permissible to be regularized as a one-time measure as held in Uma Devi's case, provided they are physically and medically fit to work or continue to work.

17. On all the above considerations, I am of the view that the petitioners are entitled to be regularized into service, at-least as a one-time measure in accordance with the decision of the Apex Court rendered in Uma Devi's case in the year 2006.

18. Resultantly all the petitioners in ID 62, 63, 64, 65, 66 and 67/2011 are ordered to be regularized into service with all attendant benefits within a month of this award coming into force after publication in the Government of India Gazette.

19. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 31st May, 2012)

A. N. JANARDANAN, Presiding Officer

Witness Examined

For the 1st Party/Petitioner : WW1, Sri S. Mohanraj

For the 2nd Party/Management : MW1, Sri T.R. Mukunthan

Documents Marked

On the Petitioner's side

Ex. No.	Date	Description
Ex. W1	—	Photo Identity Card issued to petitioners by Railways
Ex. W2	14-02-1997	Proceedings of the Senior D.P.O, absorbing substitutes as Railway Servant

Ex. W3	13-01-2007	Representation from United Labour Union to GM/Southern Railway	Ex. W11	19-12-2009	A Duty Roster issued on 19-12-2009 in which the petitioners name also cited
Ex. W4	16-11-2007	Joint Representation of petitioners herein by RPAD (with AD Card)	Ex. W12	23-02-2005	A letter sent to Senior/DPO by CDO BBG in which many details mentioned
Ex. W5	20-12-2009	BBQ Staff(Canteen) weekly of rest days (Both Regular and Casuals)	Ex. W13	---	Wages paid in vouchers
Ex. W6	05/06-07-1990	The Canteens charges assumed by Railway Officers - Order by D.P.O., Madras	Ex. W14	28-03-2011	The S.12(4) report copy of all the six cases.
Ex. W7	30-12-2009	The Deputy CPO/M reply to the Union as directed by the Central Administrative Tribunal/Chennai in OA 611/2008	Ex. W15	---	Minutes of the Canteen Management Committee participated by Chairman and Members of the Committee vide resolution no. 2 enhancing the wages from Rs. 40 to Rs. 80 per day
Ex. W8	21-10-2009	Central Administrative Tribunal Order in OA 611/2008	On the Management's side		
Ex. W9	15-12-2009	Union letter to GM/Southern Railway over Central Administrative Tribunal Order	<u>Ex. No.</u>	<u>Date</u>	<u>Description</u>
Ex. W10	24-11-2005	A letter sent by the Asstt. Manager Canteen to GM/Southern Railway over Canteen issue	EX. M1	29-11-1991	Railway Board's circular No. E[W]/91/CN/Master Circular
			EX. M2	27-05-1992	Railway Board's letter No. E[NG]/11/90/RR-1/2
			EX. M3	15-06-1990	Railway Board's letter No. E[W]/90/CN1-9
			EX. M4	---	Balance Sheet of the Central Yard canteen
			EX. M5	30-12-2009	Disposal of the representation in OA No. 611 of 2008